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IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

TEXAS MANUFACTURED HOUSING ASSOCIATION, INC.,
Petitioner,
v.
CITY OF LA PORTE and ZONING BOARD OF ADJUSTMENT OF THE CITY OF LA PORTE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE NATIONAL FOUNDATION OF MANUFACTURED HOME OWNERS, INC., LOUISIANA MANUFACTURED HOUSING ASSOCIATION, INC. AND MISSISSIPPI MANUFACTURED HOUSING ASSOCIATION, INC. IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

Amici curiae National Foundation of Manufactured Home Owners, Inc. (NFMHO), Louisiana Manufactured Housing Association, Inc. (LMHA) and Mississippi Manufactured Housing Association, Inc. (MMHA) respectfully move this Court, pursuant to Supreme Court Rule 37.2, for leave to file the brief submitted herewith, as *amici curiae* in support of Petitioner Texas Manufactured Housing Association, Inc.'s Petition for a Writ of Certiorari.

Petitioner has consented to the filing of this brief, but respondents have withheld consent. A copy of the proposed *amici curiae* brief is attached.

NFMHO is a non-profit, fully volunteer organization with its headquarters in Daly City, California. NFMHO was founded 30 years ago for the purposes of protecting the constitutional and human rights of manufactured home owners; dispelling the myths and misconceptions about manufactured housing and manufactured home owners, held by the public, the media, and most government officials; monitoring state and federal agencies to ensure the enforcement of existing laws, regulations and programs designed to protect manufactured home owners; and guaranteeing the treatment of manufactured home owners, equal to, and no differently from, conventional home owners.

LMHA and MMHA are statewide, non-profit associations which represent manufacturers, retailers, lenders, insurance companies, and manufactured housing communities. Manufacturers in Louisiana and Mississippi produce HUD-code homes that are shipped and sold to homeowners in all parts of Texas and other neighboring states, most of which are within the jurisdiction of the Fifth Circuit. Texas is, from year to year, either the largest or second largest market for HUD-code homes. From May 1996 to May 1997, 1246 of the 2229 homes built in Louisiana were shipped to Texas.

Amici are submitting this brief because of their concern that the Fifth Circuit Court of Appeals' ruling will have an adverse impact on a large class of homeowners by limiting access to affordable housing in desirable locations. Indeed, the outcome of this case will have a direct, tangible and nationwide impact on the choices available to approximately 32.4 percent of all new homeowners, in terms of where they can live, where their children can go to school and the potential for their homeownership investment to appreciate. The case will have a

further impact on the status of approximately 18 million people—over 7 percent of the U.S. population—who currently live in 7.3 million HUD-code homes that serve as their primary residences. These 18 million people form the group most likely to aspire to the purchase of a HUD-code home built in a primary residential area.

This *amici curiae* brief can assist the Court in applying the correct engineering and regulatory analysis to the preemption clauses contained in the National Manufactured Housing Construction and Safety Standards Act. *Amici* submit that such an analysis was missing from the truncated summary judgment and per curiam affirmance of the courts below.

In light of the foregoing, we respectfully request that this Court grant leave to file the attached brief of the *amici.*

Respectfully submitted,

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INTEREST OF *AMICI CURIAE* [1]

The interest of amici is identical to a primary objective of the President's National Homeownership Strategy: [2] namely, the elimination of barriers to locating affordable HUD-code homes [3] in desirable residential areas.

The National Foundation of Manufactured Home Owners, Inc. is a non-profit, fully volunteer organization with its headquarters in Dale City, California. NFMHO was founded 30 years ago for the purpose of protecting the constitutional and human rights of manufactured home owners; dispelling the myths and misconceptions about manufactured housing and manufactured home owners, held by the public, the media, and most government officials; monitoring state and federal agencies to ensure the enforcement of existing laws, regulations and programs designed to protect manufactured home owners; and guaranteeing the treatment of manufactured home owners, equal to, and no differently from, conventional home owners.

The Louisiana Manufactured Housing Association, Inc. and the Mississippi Manufactured Housing Association, Inc. are statewide, non-profit associations which represent manufacturers, retailers, lenders, insurance companies, and manufactured housing communities. Manufacturers in Louisiana and Mississippi produce HUD-code homes that are shipped and sold to homeowners in all parts of Texas and other neighboring states.[4]

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[1] The petitioner in this case made a monetary contribution to the preparation of the brief. The brief was authored in its entirety by counsel for amici.

[2] U.S. Dep't of Housing and Urban Development, *The National Homeownership Strategy: Partners in the American Dream* (May 1995) *reprinted in part in* Appendix A.

[3] The term "HUD-code home" describes manufactured housing built to the nationally preemptive performance standards established by HUD regulations contained in 24 C.F.R. pt. 3280 (1997). HUD-code homes are defined by regulation as distinct from other factory-built residential dwellings constructed to local building codes. *See* 24 C.F.R. §§ 3280.7 and 3282.12.

[4] In 1996, 2,500 homes were produced in Louisiana with an average sales price of $33,300. In the same year, 15,330 homes were

SUMMARY OF ARGUMENT

The outcome of this case will have a direct, tangible and nationwide impact on the choices available to approximately 32.4 percent of all new home purchasers, in terms of where they live, the school that their children may attend and the potential for their investments to appreciate.[5] The outcome of this case will also have an impact on the status of approximately 18 million people—over 7 percent of the U.S. population—who currently live in 7.3 million HUD-code homes that serve as primary residences.[6] These eighteen million people form the group most likely to aspire to the purchase of a HUD-code home permanently installed in a primary residential area. In 1996, 98 corporations located throughout the United States shipped 363,411 homes from 313 plants accounting for retail sales estimated at $13.8 billion and a gross economic impact of $28.3 billion.[7] Whether quantified in dollars or evaluated in terms of the quality of family, home and community life, the local zoning exclusions applied in this case to HUD-code homes raise significant and serious issues of national importance.

This case also presents an important statutory preemption question at the heart of the federal system.[8] The

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produced in Missisippi with an average sales price of $31,700. Manufactured Housing Institute, *Statewide Manufactured Housing Economic Impact Study (1996)* (last modified July 8, 1997) <http://www.mfghome.org/members/stats/96econ.html>.

[5] Manufactured Housing Institute, *Manufactured Home Shipments and Single-Family Housing Starts and Homes Sold (1980-1996)* (visited Aug. 12, 1997) <http.//www.mfghome.org/members/stats/starts.html>.

[6] Manufactured Housing Institute, *Just the Facts*, (last updated Feb. 5, 1997) <http://www.mfghome.org/media/facts297.html>.

[7] *Id.*

[8] This brief does not address the Commerce Clause issues raised in the Petitioner's Brief. However, the technical engineering and regulatory analysis submitted by *amici* does support the Commerce Clause arguments.

National Manufactured Housing Construction and Safety Standards Act (hereafter "the Act") and the Department of Housing and Urban Development's (HUD's) implementing regulations, preemption letters, January 1997 Guidelines and May 1997 Statement of Policy all prohibit local zoning boards from restricting the location of HUD-code homes on the basis of "construction and safety" requirements imposed by the Act. The City of La Porte has, *de jure* and *de facto,* excluded *all* HUD-code housing from primary residential areas, but has failed to articulate a legitimate aesthetic or compatability standard for the exclusion. Though disguised as a land use regulation, the exclusion is made on the sole basis of a preempted construction requirement: namely, the attachment of a permanent chassis to the structure. Thus, the Court has before it a conflict between the interest of Congress and the President in promoting access to affordable housing built to a national preemptive standard, and the power asserted by a local zoning board to bar that housing from primary residential areas solely because it is built to that national preemptive standard.

This brief attempts to provide the Court with some of the economic, technical and engineering data, missing from the truncated proceedings below, that are necessary to understand the intended scope of the national preemptive construction standards. The Fifth Circuit has now affirmed two cases that severely limit and deviate from HUD's interpretation of the preemptive scope of the Act in the absence of an accurate technical understanding of the complex regulatory framework and the engineering capabilities of manufactured housing.[9] Amici urge the Court to issue a GVR order to correct this error because

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[9] The other case, upon which the Fifth Circuit placed primary reliance in deciding this case, was *Texas Manufactured Housing Ass'n v. City of Nederland*, 905 F. Supp. 371 (E.D. Tex. 1995), *aff'd*, 101 F.3d 1095 (5th Cir. 1996), *cert. den.*, —— U.S. ——; 117 S.Ct. 2497; —— L.Ed. —— (1997).

of the adverse impact it will have on the availability of affordable housing in desirable locations.

ARGUMENT

I. THE SUMMARY JUDGMENT OPINION AND THE PER CURIAM AFFIRMANCE BELOW ARE NOT INFORMED BY, CONSISTENT WITH, OR IN DEFERENCE TO HUD'S INTERPRETATION OF THE ACT'S PREEMPTION CLAUSE.

A. The Courts Below Misconstrued and Misapplied the Preemption Construction Standards of the Act.

The opinions below did not—indeed, could not—articulate any aesthetic or dimensional criteria that distinguishes *all* HUD-code homes from *all* modular or other factory built homes. On the contrary, the District Court accepted the Petitioner's proffer that *many* HUD-code homes are compatible with and visually indistinguishable from site built homes.[10] The District Court illogically concluded that *all* HUD-code homes could be excluded because at least *some* may not be aesthetically compatible with site-built homes.

This fallacy of logic infects the District Court's preemption analysis. The District Court opines that "rather than establish construction or safety standards for manufactured homes, La Porte has excluded manufactured homes from its 'R-1' districts."[11] The District Court's rationale, however, begs the question: what is the basis for

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[10] *Texas Manufactured Housing Ass'n v. City of La Porte*, CA No. H-94-1066 (S.D. Tex. decided Aug. 9, 1996), *reprinted in* Petitioner's Brief Appendix C, at 15a-16a.

[11] La Porte's exclusion of all HUD-code homes does, in fact, establish variant construction and safety standards because other factory housing that conforms to local code instead of HUD-code is permitted within primary residential areas. In fact, LaPorte's Chief Building Official expressly stated that the HUD-code home at issue in this case could be replaced with a modular home. See letters of Mark Lewis reprinted in Appendices G-1 and G-2.

the exclusion of *all* HUD-code homes? It cannot be aesthetic or compatibility criteria because *many* HUD-code homes are admitted to be visually indistinguishable from site-built and other factory built homes. *All* HUD-code homes, however, have a permanent chassis and conform to HUD-code construction and safety standards, the only criteria mentioned (albeit erroneously) to distinguish *all* HUD-code homes from factory built homes permitted in primary residential areas.

Cloaked in the guise of regulating land use, the City of La Porte asserted—and the District Court expressly adopted—the disputed factual rationale that total exclusion legitimately and effectively protected property values. The District Court's treatment of this rationale further exposes the logical flaw in its preemption analysis.

La Porte asserted—and the District Court accepted—the disputed factual contention that the presence of HUD-code homes may lead to a decrease in property values for surrounding conventional or non-HUD-code factory built homes.[12] In theory, but not in fact, this feared decrease in values derives from the mere existence—not the actual use—of a permanent chassis which could possibly be used sometime in the future to move the home.[13] The rationale, carried to its logical conclusion, implies that a local zoning board could exclude *all* HUD-code manufactured housing from *all* residential areas, i.e. essentially prohibiting their use altogether. Indeed, the District Court quoted with approval *dicta* from *Scurlock v. City of Lynn Haven*, 858 F.2d 1521, 1525 (11th Cir. 1988) that a local zoning

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[12] A number of scientifically conducted studies debunk the notion that HUD-code homes have a negative impact on property values. *See, e.g.*, Kate Warner and Jeff Scheuer, University of Michigan, *Manufactured Housing Value* (Manufactured Housing Research Project Report 3); Kate Warner and Jeff Scheuer, University of Michigan, *Manufactured Housing Impacts on Adjacent Property Values* (Manufactured Housing Research Project Report 4).

[13] Petitioner's Brief Appendix C, *supra* note 10, at 12a.

board could limit housing in a primary residential area "to conventionally-built residences and exclude mobile homes." Exclusionary zoning of HUD-code homes on this rationale interferes with federal superintendence of the manufactured housing industry. It is based solely on a performance characteristic mandated by federal law, i.e. the attachment of a permanent chassis to the structure of the manufactured house. The rationale has no grounding in legitimate aesthetic or compatibility standards within the province of local zoning boards.[14]

On January 23, 1997, HUD published "Guidelines for Analyzing Situations Involving Preemption Under the Manufactured Home Construction and Safety Standards Act" (hereafter "Guidelines").[15] On May 5, 1997, HUD published a Statement of Policy.[16] The Guidelines and Statement of Policy state criteria that, if properly applied,

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[14] This link between a permanent chassis, permanent mobility and a perceived effect on property values is tenuous at best and largely chimerical. Over 95 percent of HUD-code homes are never moved once they are installed. *See, infra* fn. 35. The home at issue in this case was to be permanently attached to the foundation. "Obviously this was not a home that could leave by turning on the ignition." *Geiger v. Zoning Hearing Board of North Whitehall*, 510 Pa. 231, 237, 507 A.2d 361 (1986) ("This Court has held that it is arbitrary to apply the classification of "mobile home" or "trailer" to a structure which, once improved, will not in fact be a mobile home or a trailer either as defined by the local zoning Ordinance or by common sense. *Anstine v. Zoning Board of Adjustment*, 411 Pa. 33, 190 A.2d 712 (1963).") Other state supreme courts have reached the same conclusion. *Luczynski v. Temple*, 203 N.J. Super. 377, 497 A.2d 211 (1985); *Cannon v. Coweta County*, 260 Ga. 56, 389 S.E.2d 329 (1990).

[15] Manufactured Housing Construction and Safety Standards, 62 Fed. Reg. 3456 (1997) (to be codified at 24 C.F.R. Pt. 3282) *reprinted in* Petitioner's Brief Appendix E at 58a-65a.

[16] Manufactured Housing: Statement of Policy 1997-1, State and Local Zoning Determinations Involving HUD-Code, 62 Fed. Reg. 24337 (1997) (to be codified at 24 C.F.R. pts. 3280, 3282) *reprinted in* Petitioner's Brief Appendix E at 65a-71a.

preempt the City of La Porte's exclusion of *all* HUD-code homes from primary residential areas.[17]

The HUD Guidelines and Statement of Policy articulate two preemption tests: the first based on construction standards, and the second, more general, based on the Federal superintendence of the industry:

> In accordance with the Act, the regulation bars States from imposing a manufactured home standard regarding *construction and safety* that covers the same aspects of performance governed by a Federal standard. More generally, States may not take any action that could interfere with the *Federal superintendence* of the industry as established by the Act (24 CFR 3282.11).[18]

Both preemption tests, applied in light of engineering requirements imposed by the regulations, prohibit La Porte's exclusion of *all* HUD-code homes from primary residential areas.

B. The Act, as Interpreted and Applied by HUD, Preempts Zoning Exclusion of *All* HUD-Code Homes Based on the Construction Standard of a Permanent Chassis.

The Guidelines expressly prohibit exclusionary zoning based on "construction and safety standards."[19] According to the Guidelines:

> [A] locality is free to adopt and enforce ordinances that regulate the *appearance and dimensions* of homes

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[17] The preemption clause of the Act is contained in 42 U.S.C. § 5403(d) (1994). The regulatory preemption clause is contained in 24 C.F.R. § 3282.11(d) (1997).

[18] 62 Fed. Reg. 3456 (Jan. 23, 1997), *supra* note 15, at 3457; Petitioner's Brief Appendix E, *supra* note 15, at 58a (emphasis added).

[19] *Id.* at 60a, 61a.

> so long as the criteria established by such ordinances do not have the effect of excluding manufactured homes based on the *construction and safety standards* to which they were built.[20]

Thus, the Guidelines juxtapose and contrast proper zoning criteria that are not preempted by the Act—"appearance and dimensions"—with improper criteria that are preempted by the Act—"construction and safety standards." Contrary to the HUD Guidelines, La Porte's ordinance, though disguised as land use regulation, excludes HUD-code homes from primary residential areas because of the permanent chassis,[21] a construction feature not only required by the HUD-code, but which is an integral part of the statutory definition of a HUD-code manufactured home.[22] Moreover, the permanent chassis, located under

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[20] *Id.* at 60a (emphasis added).

[21] The term "permanent chassis" is not defined in either the Act or the regulations. "Chassis" is defined at 24 C.F.R. § 3280.902(a) to mean "the entire transportation system," including hitch, axles and wheels. In contrast, "frame" is defined at 24 C.F.R. § 3280.902(d) to mean:

> . . . the fabricated rigid substructure which provides considerable support to the affixed manufactured home structure both during transport and on-site, and also provides a platform for securement of the running gear assembly, the drawbar and coupling mechanism.

Because the regulations permit the removal of the "running gear assembly, drawbar and coupling mechanism," the "frame" is the "permanent chassis."

[22] The definition of a "manufactured home" is contained in the statute at 42 U.S.C. § 5402(6) (1994):

> "[M]anufactured home" means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width, or forty body feet or more in length, or when erected on site, is three hundred twenty or more square feet, *and which is built on a permanent chassis* and is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and

the home and often attached to a permanent foundation, does not fall within the scope of "appearance and dimensions" criteria deemed by the Guidelines to be legitimate local zoning criteria.

The La Porte exclusion of *all* HUD-code homes from primary residential districts fits exactly the type of zoning ordinance that establishes a variant construction standard preempted by the Act under the HUD Guidelines. The Guidelines speak clearly and squarely to the point:

> If a locality, however, is attempting to regulate, and even exclude, certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different from that prescribed by the Act, the locality lacks such authority.[23]

La Porte is, in fact, excluding *all* HUD-code homes through zoning enforcement based on a construction requirement imposed by the Act, i.e. the permanent chassis. The permanent chassis cannot even be seen once the home is installed. It is not relevant to the "appearance and dimensions" of the structure or other criteria within the legitimate province of local zoning boards.

The Guidelines also articulate a test to apply in determining whether illegitimate construction based criteria have been used by a local zoning board to exclude HUD-code homes that are "aesthetically the same" as other homes that are not excluded:

> electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter.

(Emphasis added.)

[23] 62 Fed. Reg. 3456, *supra* note 15, at 3457; Petitioner's Brief Appendix E, *supra* note 15, at 61a (emphasis added).

> Thus, a locality cannot accept structures meeting the Federal definition of manufactured homes which comply with different standards, such as local or State Building Codes, and exclude or restrict manufactured homes that are aesthetically the same but meet only the Federal standards. *By excluding or restricting only manufactured homes built to the Federal standards, and accepting manufactured homes built to other codes, the locality is establishing standards different than the Federal standards.*[24]

The La Porte ordinance and zoning action fails this test.

La Porte's zoning ordinance permits the installation in primary residential districts of factory housing built to local code building standards. (R. at 25). Factory housing, built to local codes, can be—and often has been—constructed with a permanent chassis.[25] A modular home, affixed to a permanent chassis, can be built to local codes, transported by chassis to the site and installed without incurring additional expense for a crane to lift it into place. On-frame modulars can also be installed, more easily and at less expense, on a pier system instead of a full masonry perimeter foundation that would be necessary for a modular without a permanent chassis. Many manufacturers have developed the ability to build modular homes "on

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[24] *Id.* (emphasis added).

[25] Respondents erroneously represented to the Fifth Circuit that a modular home cannot be constructed to include a permanent chassis. Appellees' Brief at 11. The respondents in *Texas Manufactured Housing Ass'n v. City of Nederland*, 101 F.3d 1095 (5th Cir. 1996), *cert. denied*, 117 S.Ct. 2497 (1997) made an equally erroneous statement to this Court: "Modular homes do not have a permanent chassis." Respondents' Supplemental Brief at 5. The erroneous representations are contradicted by the twelve HUD preemption letters, *reprinted in* Appendices B1-B12, which specifically address the recurring situations where local zoning boards exclude HUD-code homes from areas where modular homes built on permanent chassis are permitted. Moreover, the regulations specifically describe modular on-frame houses that meet the HUD-code definition of manufactured home. 24 C.F.R. § 3280.7 and § 3282.12.

frame" simply because of the local zoning prejudices and restrictions against the location of HUD-code homes in desirable residential areas.[26]

HUD has issued at least twelve "preemption letters" to local zoning boards to prohibit exclusion of HUD-code homes from areas that are zoned for inclusion of "on frame" or chassis-built modular homes.[27] These preemption letters, dated from September 1992 through June 1996, foreshadow the regulatory and engineering analysis that appeared this year in the Guidelines and Statement of Policy. All of the letters advise that ordinances similar to La Porte's are preempted by the Act. Thus, La Porte's exclusion of *all* HUD-code homes from primary residential areas, but inclusion of housing built to local code with a permanent chassis, fails the test articulated in HUD's preemption letters and Guidelines.[28] Moreover, the number of letters sent and the geographic distribution of the communities that received them show that improper and preempted zoning exclusions are persistent, recurring and national in scope. If let stand, the Fifth Circuit per curiam affirmance of the trial court's summary judgment will undercut and reverse HUD's efforts over the years to preempt sweeping bans on *all* HUD-code homes when visually indistinguishable factory built housing is permitted.

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[26] Appendix C lists fourteen companies located throughout the United States that manufacture modular homes with a permanent chassis. Five of those companies are members of the Louisiana Manufactured Housing Association.

[27] The HUD preemption letters are reprinted in Appendix B.

[28] The District Court failed to understand the engineering point, which further illustrates the importance of remanding the case for reconsideration informed by the HUD Guidelines admonition that determining the scope of the preemptive application of the Act often involves an engineering as well as a legal analysis.

C. The Act, as Interpreted and Applied by HUD, Also Preempts the Exclusion of *All* HUD-Code Homes Under the Federal Superintendence Test.

The HUD Guidelines illustrate the superintendence test with an example helpful to an analysis of the La Porte ordinance:

> Thus, for example, a local requirement that all homes be constructed on site, while not covering any aspect of performance, would be so fundamentally in conflict with the Federal standards as to impair the Federal superintendence of the manufactured home program. Such a requirement would be preempted under the HUD regulations.[29]

La Porte's exclusionary ordinance cannot survive the "superintendence" test,[30] because La Porte's ordinance functionally requires all housing in primary residential districts to conform to local codes. The superintendence test expressly preempts a local ordinance, such as La Porte's, that does not articulate discrete aesthetic criteria, but which excludes *all* HUD-code homes as a class, even those HUD-code homes that cannot be visually distinguished from site-built or other factory built housing. Such a preclusive ordinance, issued under the guise of "regulating land use", is so broad that it effectively eviscerates the preemptive provisions of the Act.[31]

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[29] 62 Fed. Reg. 3456, *supra* note 15, at 3458; Petitioner's Brief Appendix E, *supra* note 15, at 64a.

[30] The superintendence test, essentially, incorporates the rule that a local or state law is preempted when it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *See, e.g., Michigan Canners and Freezers Association v. Agriculture Marketing and Bargaining Board*, 467 U.S. 461, 469, 104 S.Ct. 2518, 2523, 81 L.Ed. 2d 399 (1984).

[31] *See Colorado Manufactured Housing Ass'n. v. Board of County Commissioners of Pueblo, Colorado*, 946 F.Supp. 1539, 1551 (D. Colo. 1996).

D. GVR Treatment Is Warranted by Intervening Developments and the Truncated Proceedings Below.

The standard for granting summary judgment, under Federal Rule of Civil Procedure 56(c), is the same as the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), *i.e.*, whether ". . . there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue. . . ." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). This case, at a minimum, involves a disputed issue of material fact as to whether La Porte's ordinance permits on-frame modular homes to be sited in primary residential areas which exclude HUD code homes.[32]

The lower courts failed to defer to the executive agency's interpretation of the statute or regulation that the agency is responsible for administering. *See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842, 104 S.Ct. 2778, 2781, 81 L. Ed. 2d 694 (1984). Deference to an administrative agency is especially warranted when the case involves complex regulatory or technical issues within the special expertise and competence of the agency. *Id.* The HUD Guidelines expressly caution that "either an engineering analysis or a legal analysis, or both" are often required to determine whether a local zoning ordinance is prempted by the Act or the regulations.[33]

The administrative reinterpretation of a federal statute, not fully considered by a lower court, presents an appro-

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[32] This precise issue was presented to the District Court (R. 461-471) (list of genuine issues of material fact; nos. 9, 12, 25, and 52), and to the Fifth Circuit (Brief of Appellant, Section I), as an example of a disputed fact issue precluding summary judgment.

[33] 62 Fed. Reg. 3456, *supra* note 15, at 3457; Petitioner's Brief Appendix E, *supra* note 15, at 59a.

priate case for granting certiorari, vacating and remanding the case for fuller consideration. *Lawrence v. Chater,* 116 S.Ct. 604, 606, 133 L.Ed. 2d 545 (1996), *citing Schmidt v. Espy,* 513 U.S. 801, 115 S.Ct. 43, 130 L.Ed. 2d 5 (1994). There is, in this case, both "intervening developments" and "recent developments" that the court below did not fully consider. There is also "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration." *Lawrence, supra,* 116 S.Ct. at 607. Finally, it "appears that such a redetermination may determine the ultimate outcome of the litigation." *Id.*

The District Court did not have the benefit of HUD's preemption letters, Guidelines or Statement of Policy on April 2, 1996, when it granted the City of La Porte's motion for summary judgment, or on August 9, 1996, when it entered its order denying Petitioner's motion for reconsideration.[34] The HUD Guidelines, but not the HUD Statement of Policy, were available by the time the Fifth Circuit issued its per curiam opinion affirming the district court on April 10, 1997. The per curiam opinion, however, relies primarily upon an earlier Fifth Circuit decision in *Texas Manufactured Housing Ass'n v. City of Nederland,* 905 F.Supp. 371 (E.D.Tex. 1995), *aff'd,* 101 F.3d 1095 (5th Cir. 1996), *cert. den.*, —— U.S. ——, 117 S.Ct. 2497, —— L.Ed. —— (1997), a case which also preceded HUD's Guidelines and Statement of Policy. The Fifth Circuit denied petitioner's motion for rehearing on May 7, 1997.

La Porte's exclusionary ordinance presents exactly the type of case that would have benefited from an engineer-

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[34] *Memorandum and Order on Motion for Reconsideration,* in *Texas Manufactured Housing Ass'n v. City of La Porte,* No. 96-20422 (5th Cir. 1996), *reprinted in* Petitioner's Brief Appendix C, at 7a-10a.

ing analysis and the legal analysis available through consideration of the preemption letters, Guidelines and Policy Statement.

II. THE DECISIONS BELOW IMPROPERLY EXCLUDE AESTHETICALLY COMPATIBLE HUD-CODE HOMES FROM PRIMARY RESIDENTIAL DISTRICTS.

The modern HUD-code home is not the trailer house of a bygone era. Once HUD-code homes are installed, over 95 percent are never moved.[35] Residents do move, but they usually resell their homes in place just as though they were a conventional site-built home. "For multisection homes, with their section-to-section utility connections and interior and exterior trimwork and finishes on walls, floors, and ceilings, relocating the house can cost more than $10,000." *Id.* When installed, the hitch, axles and wheels are usually removed. Often homes are installed on permanent foundations (including full basements) with floor plans that allow for over 2000 square feet of living space, attached garages, sheet rock walls, clapboard siding, bay windows and fully shingled roofs.[36] In essence, the exterior and interior appearance of a HUD-code home can be made virtually indistinguishable from other factory housing built for on-site assembly or even conventional "stick" housing.[37]

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[35] George Allen, *Developing and Financing in Land-Lease Communities, in Urban Land*, Jan. 1996, at 36; Peter A. Keyes and Steven Winter, *The Manufactured Home: Design and Construction in Urban Land*, Jan. 1996, at 28. *See also* Welford G. Sanders, American Planning Association, *Regulating Manufactured Housing* (Planning Advisory Service Report Number 398, 1986) at 1.

[36] Keyes and Winter, *supra* note 35, at 30. *See also* newspaper articles cited in Appendix D.

[37] Welford G. Sanders, *Regulating Manufactured Housing in Urban Land*, Jan. 1995, at 46; University of Michigan Study *cited in Building a Foundation in Manufactured Housing*, America's Community Banker, Sept. 1995, at 12, 13.

These aesthetically compatible HUD-code homes have received enthusiastic and widely reported reviews.[38] The versatility of HUD-code homes will soon be demonstrated again through the Urban Design Project sponsored by the Manufactured Housing Institute.[39] As reported in the *Washington Post*,[40] HUD-code homes, costing 25 to 30 percent less than conventional stick homes built on-site, will be constructed in six communities, including Washington, D.C.[41] The houses will feature, among other amenities, two stories, full basements, steeply pitched roof lines, wrap-around porches and garages.

Modern construction techniques account for the longevity of HUD-code homes which, according to a recent analysis of census data, average 55.8 years.[42] The manufacturing process has been described as "a kind of rationalized stick-building under controlled conditions."[43] As the chassis moves along an assembly line, workers at each station use sophisticated cutting and fastening machinery to attach walls and roofs that are built off-line. Many manufacturers control the process with integrated computer-assisted design and computer-assisted manufacturing

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[38] Appendix D contains citations to newspaper accounts that have appeared in the last two years reporting on the modern technological advances that have been used to manufacture HUD-code homes aesthetically compatible with on-site stick-built homes. Color photographs and reprints, which cannot easily be reproduced in the form of an appendix, have been lodged with the Clerk of Court to illustrate the aesthetic compatibility of HUD-code homes.

[39] Appendix E.

[40] Kenneth R. Harney, *Inexpensive Factory-Built Homes to Take Root on Urban Landscapes*, Wash. Post., Jan. 18, 1997, at F1.

[41] The other five communities are Birmingham, Alabama; Denver, Colorado; Louisville, Kentucky; Milwaukee, Wisconsin; and Wilkinsburg, Pennsylvania.

[42] Carol B. Meeks, Manufactured Housing Institute, *Manufactured Home Life*, May 1995, at 9, 10.

[43] Keyes and Winter, *supra* note 35, at 28.

systems (known as CAD/CAM). By these means higher and more consistent quality can be maintained in HUD-code manufacturing than in site-built construction. In addition, company quality control and HUD-required inspections occur daily, thereby assuring consistent compliance with the performance based standards.

Another reflection of the advances in manufactured housing is the availability of traditional FHA, VA and USDA Rural Housing Service loans to finance the purchase of HUD-code homes.[44] In part, such financing is available because HUD-code homes are as durable as conventionally built housing.[45] Nevertheless, as HUD's preemption letters, Guidelines and Statement of Policy reflect, many zoning boards have continued to exclude HUD-code homes on the basis of construction criteria, thereby interfering with HUD's preemptive superintendence of the manufactured housing industry.

III. THE DECISIONS BELOW ALSO INTERFERE WITH THE AVAILABILITY OF AFFORDABLE HOUSING.

HUD-code homes are the most affordable form of new housing presently available. According to the U.S. Department of Commerce, Bureau of Census, the 1996 average sales price of a new site-built home (structure only) was $124,650.[46] With an average size of 2,125 square feet, conventional stick-built housing cost $58.66 per square

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[44] HUD loan program, *see* 24 C.F.R. pt. 201 (1997); VA loan program, *see* 38 C.F.R. pt. 26 (1996), 38 U.S.C. § 3712 (1996); USDA/RHS loan program, *see* 7 C.F.R. § 3550.73 (1997).

[45] *Building a Foundation in Manufactured Housing, supra* note 37, at 12.

[46] Manufactured Housing Institute, *Cost and Size Comparisons for New Manufactured Homes and New Single-Family Site-Built Homes (1970-1995)* (visited Aug. 4, 1997) <http://www.mfghome.org/members/stats/costs.html>.

foot.[47] The average cost of HUD-code manufactured housing compares very favorably, at $27.83 per square foot, about half the unit cost of site-built housing. In addition, the average size of HUD-code housing was 1,380 square feet resulting in a structural cost of $38,400 or a little less than one-third of the cost of site-built housing.[48]

Not surprisingly, the affordability of HUD-code manufactured housing has led to increased demand. In 1980, HUD-code housing accounted for 28.9 percent of all new single family homes sold, 221,091, out of 545,000.[49] By 1996, the percentage of new homes sold had increased to 32.4 percent, 363,411 out of 757,000.[50]

"For many low- and moderate-income families, manufactured housing represents the only form of housing they will ever be able to afford to own."[51] Affordable HUD-code homes make it possible for millions to share in the American dream of family home ownership who would otherwise be left out.

The importance of HUD-code housing as a solution to the nation's shortage of affordable housing is evident. Equally evident, the decision in the La Porte case stands as an obstacle to that objective. In short, as a matter of law, the exclusion has been preempted by the Act; as a matter of policy, the exclusion defeats the President's call, in the National Homeownership Strategy, to eliminate regulatory and financial barriers to the availability of manufactured housing.

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[47] *Id.*

[48] *Id.* The average cost and size of a multi-section home was $47,300 and 1600 square feet, or a little less than 38 percent of the cost of a site built home.

[49] Manufactured Housing Institute, *supra* note 5.

[50] *Id.*

[51] Sanders, *supra* note 35, at 4.

CONCLUSION

For the reasons set forth above, the Court should grant certiorari, vacate the opinions below and remand to the District Court for reconsideration in light of HUD's preemption letters, recently issued Guidelines and Statement of Policy.

Respectfully submitted,

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APPENDICES

APPENDICES

APPENDIX A

Excerpts from the National Homeownership Strategy: Partners in the American Dream U.S. Department of Housing and Urban Development (May 1995), pages 3-11, 3-12, 3-13 and 3-14

Eliminate Regulatory and Financing Barriers to the Availability of Manufactured Housing

STRATEGY: The partnership should initiate a series of major regulatory, administrative, legislative, research, and educational initiatives to eliminate barriers to the availability of quality, affordable manufactured housing and to its acceptance among State and local regulatory agencies and financing entities.

Issues and Impediments: Manufactured housing is a major source of affordable housing, especially for many lower and moderate-income families living in rural and suburban areas. In 1994 over 300,000 manufactured homes—one out of every five single-family homes built—were added to the national housing stock.

Most purchasers of manufactured homes who would not otherwise be able to purchase a home express satisfaction with their home. Yet, prospective homebuyers face Federal, State, and local regulatory, as well as financing, barriers. Some of these barriers stem, in part, from the public's perception of the quality, safety, and durability of manufactured housing.

There is general support among the homebuilding industry, consumer groups, and government regulators that the following initiatives will increase the availability of manufactured housing:

- Continuation of a Federal preemptive building code and a uniform enforcement system to facilitate interstate commerce and ensure affordability.
- Fair and timely administration of construction standards.

- Establishment and enforcement of State installation standards and other appropriate regulatory programs.
- Effective, market-driven consumer warranties.
- Access to the full range of housing finance resources.

Manufactured housing has a unique status—it's the only housing built under a Federal preemptive code. As such it is the only form of housing in which the Federal Government, working in cooperation with private industry and State and local governments, plays the leading role in the construction process. The performance nature of the HUD code, with emphasis on value engineering and uniform enforcement, has allowed a range of technological innovations in the use of materials and procedures.

North Carolina has one of the most comprehensive and successful State programs for manufactured housing in the nation. Key elements of the program include:

Consumer Complaint Tracking—Staff process and handle complaints.

Training in Home Setup and Anchoring—The State trains dealers and sets up companies on proper techniques for installing and handling.

Setup Standards—The State will publish a manual on generic setup requirements for all manufactured homes.

Tie-Down Requirements—North Carolina has required tie down of all manufactured and mobile homes since 1970.

Third-Party System—A third-party inspection agency has been used since 1970 to enforce State restrictions and relicensing requirements.

Warranty Program—North Carolina required a 12-month warranty on all new homes for "substantial" defects that affect the performance of the home.

Licensing—manufacturers, setup companies, dealers, and sales persons all must be licensed by State agencies.

For a number of reasons—legal considerations of property title and taxation, sales and distribution systems, zoning and land-use patterns, and family income—most manufactured homes are owned as personal property rather than as real estate. Such ownership requires that these homes be financed with consumer loans rather than with conventional home mortgages. Homebuyers who wish to locate their manufactured homes on land they own or are purchasing deserve access to mortgage financing. There now are barriers to placing a mortgage on property that includes a manufactured home. Manufactured home financing has evolved along a separate path from other single-family home financing. As a result, communication between traditional mortgage lenders and the manufactured housing industry has been somewhat limited. Because the demand for locating and financing manufactured homes as real estate is growing, the partnership should work to break down the barriers to mortgage financing so that purchasers of manufactured homes are not unfairly denied access.

Similarly, many urban and suburban communities limit the availability of manufactured homes through regulatory and zoning practices. As a result, manufactured housing has evolved as a primary rural form. Under many local zoning—and ordinance—related development controls, such housing is either completely excluded because it is not considered a single-family dwelling, or it is relegated solely to manufactured home parks.

Action 23: Regulatory Review of Manufactured Homes

HUD should work in cooperation with State and local governments, private industry, and consumers to review and update its current system of regulating manufactured housing. This effort should include but not be limited to:

- Adopting a consensus-based process and streamlining procedures to promote timely updates and the development of standards to ensure that manufactured housing is both a safe and affordable form of housing.
- Reviewing the current private inspection system to ensure effective inspections.
- Promoting the availability of consumer protection that is equal to or broader than protection for other forms of single-family residences.

Action 24: State Participation in Manufactured Homes

California has led the way in the use of manufactured homes in traditional subdivisions. As a result of State legislation permitting HUD-code homes to be developed in single-family neighborhoods, there has been greater public acceptance of manufactured housing.

For example, using local redevelopment funds, the Poway Redevelopment Agency in Poway, California, developed the Haley Ranch Estates. The Haley Ranch Estates consist of 65 rental units starting at $250 a month, which is well within reach of families earning low and moderate incomes.

The partnership should improve and strengthen the role of State governments in manufactured housing. For example, partners should encourage more States to assume regulatory responsibilities, develop appropriate installation standards and inspection procedures, and evaluate the adequacy of consumer protection programs.

Action 25: Cooperative Research for Manufactured Homes

The partnership should initiate cooperative research and demonstration efforts to accelerate the development of

technologies for manufactured housing. Specifically, HUD and the manufactured home industry should:

- Evaluate new technologies for potential use in the next generation of manufactured homes to achieve efficiency, affordability, quality, and durability.
- Initiate cooperative research efforts to develop cost-effective and safe installation technologies to obtain private financing.
- Initiate education and dissemination efforts to accelerate research into innovative, efficient, and effective construction practices.

Action 26: Manufactured Home Industry Initiatives

The partnership should determine the feasibility of establishing programs to improve nationwide installation standards and enforcement and generate an industrywide consensus on warranties that offer consumers comprehensive coverage on both the manufactured home and its installation. Working together, home manufacturers, retailers, and other industry segments should:

- Provide technical assistance to State governments and encourage them to establish installation standards and corresponding enforcement programs.
- Identify and promote voluntary industry guidelines for market-driven warranties offering consumers comprehensive coverage of manufactured homes that includes installation.

Action 27: Zoning and Land Development Reform for Manufactured Homes

The partnership should identify and promote zoning and land development policies that are more conducive to manufactured housing. As part of this initiative, partners should develop model legislation for States and localities to adopt that prohibits exclusion of manufactured housing solely on the basis of HUD certification. The partners also

should produce design and land development criteria and guidance materials for use by housing developers and local governments, to facilitate inclusion of manufactured housing in their jurisdictions. To supplement these efforts, the partnership should offer a cooperative program of education and technical assistance to encourage nationwide acceptance of the model legislation within 6 years.

Action 28: Access to Financing for Manufactured Homes

The partnership should undertake a comprehensive program to expand the availability of financing for purchasers of manufactured homes who wish to own their homes. This program should include:

- An improved and simplified FHA financing program to replace the existing FHA Title I home modernization program.
- Simplification of the FHA 203(b) program for manufactured housing.
- Provision for adequate loans to cover installation of manufactured homes.
- Review of the technical criteria for acceptable manufactured home installation standards.
- Review of the appraisal guidelines of manufactured homes.
- Education and marketing on the availability of mortgage financing for manufactured homes.

APPENDIX B-1

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

Office Of The Assistant Secretary
For Housing-Federal Housing Commissioner

September 14, 1992

Mr. Michael Mitchell
St. Clair County Zoning Board
10 Public Square
Belleville, Illinois 62220

Re: 42.131 of the St. Clair County revised Code of Ordinances

Dear Mr. Mitchell:

This office is responsible for enforcing the Federal Manufactured Home Construction and Safety Standards on behalf of the Secretary for the U.S. Department of Housing and Urban Development (HUD). Section 42.131 of the St. Clair County revised Code of Ordinances, entitled "Special Permits For Mobile Homes," was recently brought to our attention and appears to be in conflict with the National Manufactured Housing Construction and Safety Standards Act of 1974.

In 1975, HUD issued Manufactured Home Construction and Safety Standards (the "Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (the "Act"). Section 604(d) of the Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Act] is in effect, no State or political subdivision of a State shall have any authority . . . to establish . . ., with

> respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations (the "Regulations"), 24 C.F.R. § 3282.11(e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

Our understanding is that § 42.131 of the St. Clair County revised Code of Ordinances would preclude the siting of a manufactured home meeting the requirements of the Federal Standards in the County of St. Clair unless a "special use permit" is acquired. However, if the home meets the Building Officials and Code Administrators (BOCA) National Building Code, a special use permit is not required. We understand that this is

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true even if the home built to the Federal Standards is aesthetically the same as the home built to the BOCA Standards.

The Regulations, 24 C.F.R. § 3282.11(b), prohibit a State from requiring, as a condition of entry into or sale in the State, that a manufactured home which has been certified as in conformance with the Federal Standards by the application of the HUD label required by 24 C.F.R. § 3282.362(c)(2)(i) be subjected to state inspection to determine compliance with any standard covering any aspect of the manufactured home covered by the Federal Standard.

Generally, municipal ordinances regulating the location of manufactured homes have not been subject to the regu-

latory authority of the Act because such ordinances rest on the locality's right to determine proper land use. In the case of 42.131, however, St. Clair County is attempting to regulate and even exclude certain manufactured homes based solely on a construction and safety code different than that prescribed by the National Manufactured Housing Construction and Safety Standards Act of 1974. This regulation and exclusion is evident by the transcript of a March 2, 1992, hearing before the St. Clair County Zoning Board of Appeals, matter 92-9-SP, involving an application by Richard and Gail Halamicek for a special use permit. The transcript indicates that the Zoning Board denied a special permit application only because the subject dwelling was a manufactured home that only met the Federal Standards. The following is an excerpt from page 10 through 11 of the transcript:

> G. HALAMICEK: Okay. But what you are saying is it basically compare to the price a minimal amount to have this place fixed up on the inside. It will basically look the same on the outside and then I wouldn't have to go through a hearing.
>
> GEORGE: I can't answer it. The lady is an authority on the end cost, I'm sure.
>
> EDWARDS: I'm not familiar with the Fleetwood Home.
>
> G. HALAMICEK: Fairmount.
>
> EDWARDS: Fairmount. But you can buy a modular coded home and taking an average cost of industry, the maximum you're going to look at is around $2,500 more for going to a modular coded home.
>
> G. HALAMICEK: And it will look basically like this one here.
>
> EDWARDS: Aesthetically, you cannot tell the difference.

G. HALAMICEK: And I don't have to—get a permit for that?

GEORGE: You wouldn't have to be before this board.

G. HALAMICEK: It doesn't make any difference then. In other words, I can put my home out there if I put in a little bit more money and it's still going to look the same to these people?

GEORGE: Well, there's a few key words you're missing. It meets the BOCA code, which is a State accepted code.

G. HALAMICEK: But they don't know the difference between BOCA and I don't either.

GEORGE: Fact. But this Board has guidelines we have to live with. The County has guidelines. That's the guideline the County has established. If it meets the BOCA code, you do not need a permit to put it there.

Under 5 604(d) of the Act and its implementing regulations, St. Clair County cannot accept manufactured homes meeting the BOCA Standards and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards. Since § 42.131 of the St. Clair County revised Code of Ordinances requires a manufactured home to meet the BOCA Standard or obtain a special use permit, it establishes different construction and safety requirements for manufactured homes than those prescribed under the National Manufactured Housing Construction and Safety Standards Act of 1974. Accordingly, the ordinance, to the extent that it requires standards other than the Federal Standards for manufactured homes, is preempted by the Act.

If you have any questions, please contact Gary A. Nemec, of the Office of General Counsel at (202) 708-4044.

Sincerely,

/s/ David Nimmer, Director
Office of Manufactured
Housing and
Regulatory Functions

cc: Honorable Alan J. Dixon
230 South Dearborn Street
United States Senator
Chicago, IL 60604
Attn: Lori Logan
Staff Assistant

Mr. Rick Brown
St. Clair County
Mobile/Manufactured
Homeowners
Association
523 South Illinois St.
Belleville, IL 62220

APPENDIX B-2

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

Office Of The Assistant Secretary for Housing
Federal Housing Commissioner

April 19, 1993

Mr. David L. Brown
Supervisor
Building Safety Services
Pontiac Fire and Rescue
413 North Mill Street
Pontiac, Illinois, 61764-1813

Re: Pontiac Zoning Ordinances Restricting the Siting of Manufactured Homes in Areas Other than Mobile Home Parks

Dear Mr. Brown:

This office is responsible for enforcing the Federal Manufactured Home Construction and Safety Standards on behalf of the Secretary for the U.S. Department of Housing and Urban Development (HUD). Your March 19, 1993, letter to Larry Vietti and Section Z of Pontiac's Ordinance Amending Mobile Home Park Ordinance were recently brought to our attention. A copy of your letter is enclosed.

In 1975, the Department issued the Manufactured Home Construction and Safety Standards (the "Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (the "Act"). Section 604(d) of the Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Act] is in

> effect, no State or political subdivision of a State shall have any authority . . . to establish . . ., with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations (the "Regulations"), 24 C.F.R. § 3282.11(e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

Section 603(6) of the Act, 42 U.S.C. § 5402(6), defines a manufactured home as:

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

Our understanding is that Section Z of the Pontiac, Illinois, Ordinance Amending Mobile Home Park Ordinance entitled "Allowing Mobile Homes to Be Used for Dwellings Outside of Parks is Prohibited" prohibits the siting of a manufactured home outside mobile homes parks. In practice, however, our understanding is that Pontiac will allow a manufactured home to be placed anywhere in the city if it meets the CABO One and Two Family Dwelling Code, the National Electrical Code, the State of Illinois Plumbing Code and the BOCA National Mechanical Code.

Generally, local ordinances regulating the location of manufactured homes have not been subject to the regu-

latory authority of the Act because such ordinances rest on the locality's right to determine proper land use. However, if a locality is attempting to regulate and even exclude certain manufactured homes based solely on a construction and safety code different than that prescribed by the National Manufactured Housing Construction and Safety Standards Act of 1974, the locality is without authority to do so.

Under § 604(d) of the Act and the Regulations, a locality cannot accept manufactured homes meeting different standards and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards. To the extent that local ordinances require standards other than the Federal Standards for manufactured homes, they are preempted by the Act.

Pontiac's zoning ordinances appear to preclude the siting other than in mobile home parks, of manufactured homes that only meet Federal Standards. On the other hand, Pontiac's zoning enforcement practices, as implied in your letter, place no restrictions on structures that meet the definition of a manufactured home but are built to the standards listed in that letter. Accordingly, Pontiac's zoning ordinances and zoning enforcement practices, to the extent that they require standards other than the Federal Standards for structures that meet the definition of a manufactured home, are preempted by the Act.

If you have any questions, please contact Gary A. Nemec, of the Office of General Counsel at (202) 708-4044.

Sincerely,

David Nimmer, Director
Office of Manufactured Housing
and Regulatory Functions

Enclosure

APPENDIX B-3

June 11, 1993

Mr. Larry Whaley, Chair
Osceola County Board of County
Commissioners
Room 155
Kissimmee, Florida 34741

Re: Osceola County Zoning Regulations Restricting the Siting of Manufactured Homes

Dear Mr. Whaley:

This office is responsible for enforcing the Federal Manufactured Home Construction and Safety Standards on behalf of the Secretary for the U.S. Department of Housing and Urban Development (HUD). The Osceola County Zoning Regulations ("Osceola's Regulations") for Residential Single Family RS-1 through RS-1C Districts and the definitions, in Osceola's Regulations, for "Dwelling Unit," "Factory Built Structure," and "Manufactured Home" were recently brought to our attention.

In 1975, the Department issued the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Act"). Section 604(d) of the Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Act] is in effect, no State or political subdivision of a State shall have any authority . . . to establish . . . , with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations ("Regulations"), 24 C.F.R. § 3282.11 (e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

Section 603(6) of the Act, 42 U.S.C. § 5402(6), defines a Manufactured Home as:

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

The definition for "Factory Built Structure," in Osceola's Regulations, can be interpreted to include structures that meet the Act's definition of "Manufactured Home." However, Osceola's definition of "Factory Built Structure" applies to "any structure built in conformance with the Standard Building Code . . .", but specifically states that it "does not apply to manufactured homes built to the HUD code." Moreover, a "Manufactured Home," by definition in Osceola's Regulations, must bear "a seal certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards of the Department of Housing and Urban Development. . . ."

It appears that the only thing that legally separates "Manufactured Homes" from "Factory Built Structures," in Osceola County, is that a "Manufactured Home" is built to the Federal Standards, and a "Factory Built Structure" is built to the Standard Building Code. Both structures can be 320 or more square feet when erected on site, both structures can be built on a permanent chassis and both structures can be transported in one or more sections, but only the "Factory Built Structure" is considered a "Dwelling Unit."

Our understanding is that Osceola's Regulations preclude the siting of a manufactured home built to the Federal Standards in RS-1 Residential Single Family Districts and only allow conditional use, after a hearing, of a manufactured home built to the Federal Standards in RS-2 through RS-1C Residential Single Family Districts. However, if the same home meets the Standard Building Code, the home is considered a "Factory Built Structure" or "Modular Home" and, thus, a "Dwelling Unit." As a "Dwelling Unit," the Standard Building Code home can be sited in any of the above residential districts without condition or the need for a hearing. We understand that this is true even if the home built to the Federal Standards is aesthetically the same as the home built to the Standard Building Code.

Generally, local ordinances regulating the location of manufactured homes have not been subject to the regulatory authority of the Act because such ordinances rest on the locality's right to determine proper land use. However, if a locality is attempting to regulate and even exclude certain manufactured homes based solely on a construction and safety code different than that prescribed by the National Manufactured Housing Construction and Safety Standards Act of 1974, the locality is without authority to do so.

Under § 604(d) of the Act and the Regulations, a locality cannot accept manufactured homes meeting different standards and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards. By excluding or restricting only manufactured homes built to the Federal Standards, the locality is establishing standards for manufactured homes different than the Federal Standards. To the extent that local zoning regulations require standards other than the Federal Standards for manufactured homes, they are preempted by the Act.

Osceola County Zoning Regulations appear to preclude or at least restrict the siting of structures meeting the Act's definition of "Manufactured Home," if the structures only meet the Federal Standards. On the other hand, those regulations place no restrictions on structures that meet the Act's definition of a "Manufactured Home," but are built to the Standard Building Code. Accordingly, Osceola's Regulations, to the extent that they require standards other than the Federal Standards for manufactured homes, are preempted by the Act.

If you have any questions, please contact Gary A. Nemec, of the Office of General Counsel at (202) 708-4044.

Sincerely,

David Nimmer, Director
Office of Manufactured Housing
and Regulatory Functions

cc: Mr. Ted Garrod, Zoning Supervisor
Osceola County Zoning Department
17 South Vernon Avenue
Room 235
Kissimmee, Florida 34741

John and Donna Jacobs
1109 Minnesota
St. Cloud, Florida 34769

APPENDIX B-4

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

Office Of The Assistant Secretary
For Housing-Federal Housing Commissioner

March 3, 1994

Ms. Solveig L. Smith
Zoning Administrator
Carroll County, Maryland
225 N. Center Street
Westminster, MD 21157-5194

Re: Carroll County Zoning Regulations Restricting the Siting of Manufactured Homes

Dear Ms. Smith:

This office is responsible for enforcing the Federal Manufactured Home Construction and Safety Standards on behalf of the Secretary for the U.S. Department of Housing and Urban Development ("HUD"). The Carroll County Zoning Regulations were recently brought to our attention by the enclosed letter from Mr. Arthur L. Sauers.

In 1975, HUD issued the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Act"). Section 604 (d) of the Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Act] is in effect, no State or political subdivision of a State shall have any authority . . . to establish . . . , with respect to any manufactured home covered, any standard regarding construction or safety applicable to the

> same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations ("Regulations"), at 24 C.F.R. § 3282.11(e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

Section 603(6) of the Act, 42 U.S.C. § 5402(6), defines a "Manufactured Home" as:

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

In a telephone conversation, Mr. Gary A. Nemec of HUD's Office of General Counsel was informed by Mr. Ralph Green of Carroll County's Bureau of Permits and Inspection that, in Carroll County a structure meeting the above definition of manufactured home must be certified by the Maryland Codes Administration and appear on a state approved list to be classified as a manufactured home and allowed to be sited outside of a mobile home park. Mr. Green indicated that to be certified, the structure must be built and inspected according to the Building Officials and Code Administrators (BOCA) National Building Code. However, Mr. Green informed Mr. Nemec that if the same structure, meeting the above definition of manufactured home, only has a HUD label and does not appear on the state approved list, it is classified as a mobile home and must be placed in a mobile home park.

Generally, local ordinances regulating the location of manufactured homes have not been subject to the regula-

tory authority of the Act because such ordinances rest on the locality's right to determine proper land use. However, if a locality is attempting to regulate and even exclude certain manufactured homes based solely on a construction and safety code different than that prescribed by the National Manufactured Housing Construction and Safety Standards Act of 1974, the locality is without authority to do so.

Under § 604(d) of the Act and the Regulations, a locality cannot accept manufactured homes meeting different standards and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards. By excluding or restricting only manufactured homes built to the Federal Standards and accepting manufactured homes built to state or local codes, the locality is establishing standards for manufactured homes different than the Federal Standards. To the extent that local zoning regulations require standards other than the Federal Standards for manufactured homes, they are preempted by the Act.

Carroll County Zoning Regulations appear to preclude or at least restrict the siting of a structure meeting the Act's definition of "manufactured home," if the structure only meets the Federal Standards. On the other hand, those regulations place no restrictions on a structure that meets the Act's definition of "manufactured home," but is built to the state or BOCA codes. It appears that both structures can be 320 or more square feet when erected on site, both structures can be built on a permanent chassis and both structures can be transported in one or more sections, but only the owner of a manufactured home that appears on the state approved list by virtue of the structure's compliance with BOCA can be sited anywhere in Carroll County. However, the structure built in accordance with the Federal Standards is restricted to mobile home parks. We understand that this is true even if the home built to the Federal Standards is aesthetically the same as the home built to the BOCA code.

Accordingly, Carroll County's Zoning Regulations, to the extent that they require standards other than the Federal Standards for manufactured homes, are preempted by the Act.

If you have any questions, please contact Gary A. Nemec, of the Office of General Counsel at (202) 708-4044.

Sincerely,

David Nimmer, Director
Office of Manufactured Housing
and Regulatory Functions

Enclosure

cc: Arthur L. Sauers
815 East Deep Run Road
Westminster, MD 21158

APPENDIX B-5

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

Office Of The Assistant Secretary
For Housing-Federal Housing Commissioner

April 15, 1994

Mr. Steve Lutz, Chairman
Louisville Board of Zoning Adjustments
531 Court Place, Suite 900
Louisville, Kentucky 40202

Re: Louisville Zoning Regulations Restricting the Siting of Manufactured Homes

Dear Mr. Lutz:

This office is responsible for enforcing the Federal Manufactured Home Construction and Safety Standards on behalf of the Secretary for the U.S. Department of Housing and Urban Development ("HUD"). The Louisville Zoning Ordinances restricting the siting of manufactured homes were recently brought to our attention by the enclosed letter from William Friedlander.

In 1975, HUD issued the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Act"). Section 604(d) of the Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Act] is in effect, no State or political subdivision of a State shall have any authority . . . to establish . . ., with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manu-

> factured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations ("Regulations"), 24 C.F.R. § 3282.11 (e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

Section 603(6) of the Act, 42 U.S.C. § 5402(6), de fines a "Manufactured Home" as:

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

Mr. Friedlander's letter provided Louisville's definition for "Modular Home" established through the June 26, 1974, resolution of the Louisville and Jefferson County Board of Zoning and a March 22, 1982, clarification of that definition from the Zoning Board's attorney. (See the attachments to Mr. Friedlander's letter). Together, the definition and clarification could be interpreted to include structures that also meet the Federal definition of "Manufactured Home" except for Louisville's requirement that such a structure must "meet [] or exceed[] the applicable building, heating, plumbing and electrical codes for the City of Louisville. . . ."

Generally, local ordinances regulating the location of manufactured homes have not been subject to the regulatory authority of the Act because such ordinances rest on the locality's right to determine proper land use. However, if a locality is attempting to regulate and even exclude certain manufactured homes based solely on a con-

struction and safety code different than that prescribed by the National Manufactured Housing Construction and Safety Standards Act of 1974, the locality is without authority to do so.

Under § 604(d) of the Act and the Regulations, a locality cannot accept manufactured homes meeting different standards and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards. By excluding or restricting only manufactured homes built to the Federal Standards and accepting manufactured homes built to state or local codes, the locality is establishing standards for manufactured homes different than the Federal Standards. To the extent that local zoning regulations require standards other than the Federal Standards for manufactured homes, they are preempted by the Act.

If the only thing that legally separates "Manufactured [mobile] Homes" from "Modular Homes," in the City of Louisville is that a "Manufactured Home" is built to the Federal Standards and a "Modular Home" is built to state or local building codes, Louisville is preempted by the Act from restricting the siting of manufactured homes. In other words, if *both* structures are 320 or more square feet when erected on site, are built on a permanent chassis, and are transported in one or more sections but only the structure that meets the state or local building codes can be sited outside a mobile home park, Louisville may be acting without authority.

If you have any questions, please contact Gary A. Nemec, of the Office of General Counsel at (202) 708-4044.

Sincerely,

David Nimmer, Director
Office of Manufactured Housing
and Regulatory Functions

Enclosure

cc: Mr. William P. Schreck, Director
Department of Inspections, Permits & Licenses
Code Enforcement Division
Louisville, KY 40202-2728

Mr. William Friedlander
2140 Bonnycastle
Louisville, KY 40202

APPENDIX B-6

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

Office Of The Assistant Secretary
For Housing-Federal Housing Commissioner

October 4, 1994

Mr. Edward Strapp, Town Supervisor
Town of West Bloomfield
P.O. Box 87
West Bloomfield, NY 14585

Re: West Bloomfield Zoning Ordinances Restricting the Siting of Manufactured Homes

Dear Mr. Strapp:

This office is responsible for enforcing the Federal Manufactured Home Construction and Safety Standards on behalf of the Secretary for the U.S. Department of Housing and Urban Development ("HUD"). The West Bloomfield Zoning Ordinances restricting the siting of manufactured homes were recently brought to our attention by Mrs. Ellen Cuthbertson. A copy of Mrs. Cuthbertson's letter is enclosed.

In 1975, HUD issued the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Federal Act"). Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Federal Act] is in effect, no State or political subdivision of a State shall have any authority . . . to establish . . .,

> with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations ("Regulations"), 25 C.F.R. § 3282.11(e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

Section 603(6) of the Federal Act, 42 U.S.C. § 5402 (6), defines a "manufactured home" as:

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

West Bloomfield's Zoning Ordinances define a "mobile home" as follows:

> A residential dwelling unit designed for transportation after fabrication on streets or highways, on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling, complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities and the like. A travel trailer is not to be considered as a mobile home.

In a telephone conversation on September 27, 1994, Mr. Gary A. Nemec of HUD's Office of General Counsel was informed by Mr. Scott Storke, West Bloomfield's Zon-

ing Officer, that mobile homes, in general, are restricted to mobile home parks, but may be permitted on individual lots within the town's limits as (1) an agricultural convenience, (2) an interim dwelling, and (3) under special necessity. Section 10.6 of West Bloomfield's Zoning Ordinances outlines these special uses. Accordingly, if all structures meeting the definition are treated alike, West Bloomfield's definition of "mobile home" and the enforcement of its zoning regulations based on the definition would not be in conflict with the preemptive provisions of the Federal Act.

However, Mr. Storke confirmed the practices alleged in Mrs. Cuthbertson's letter that a structure meeting the town's definition of "mobile home" and the Federal Act's definition of "manufactured home" could be outside of a mobile home park without the need for a special use permit if the home met the New York State Uniform Building Code. Mr. Storke indicated that these types of structures are distinguished by the label placed on the home. A structure that meets the definition of mobile home, but has a label indicating compliance with the New York State Uniform Building Code, is considered a "modular home" and can be sited by right within the town limits. A mobile home, which is restricted to mobile home parks, has a label indicating compliance with the Federal Standards. Accordingly, it appears that in practice West Bloomfield restricts the siting of manufactured (mobile) homes based on what standards they meet.

Generally, local ordinances regulating the location of manufactured homes have not been subject to the regulatory authority of the Federal Act because such ordinances rest on the locality's right to determine proper land use. However, if a locality is attempting to regulate and even exclude certain manufactured homes through zoning that is based solely on a construction and safety code different than that prescribed by the National Manufactured Hous-

ing Construction and Safety Standards Act of 1974, the locality is without authority to do so.

Under Section 604(d) of the Federal Act and the Regulations, a locality cannot accept manufactured homes meeting different standards (New York State Uniform Building Code) and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards. By excluding or restricting only manufactured homes built to the Federal Standards and accepting manufactured homes built to state or local codes, the locality is establishing standards for manufactured homes different than the Federal Standards. To the extent that the language or enforcement of local zoning regulations require that manufactured homes meet standards other than the Federal Standards for manufactured homes, they are preempted by Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d).

If the only thing that legally separates a manufactured home (mobile home) from another factory-built, single-family dwelling in West Bloomfield is that the manufactured home is built to the Federal Standards and the other factory-built housing is built to New York State Uniform Building Code, West Bloomfield is preempted by the Federal Act from restricting the siting of the "HUD Code" manufactured homes. In other words, if *both* structures are 230 or more square feet when erected on site, are built on a permanent chassis, and are transported in one or more sections but only the structure that meets the New York State Uniform Building Code can be sited by right outside a mobile home park, West Bloomfield may be acting without authority.

If you have any questions, please contact Gary A. Nemec, of the Office of General Counsel, at (202) 708-4044.

Sincerely,

David Nimmer, Director
Office of Manufactured Housing
and Regulatory Functions

Enclosure

cc: Mrs. Ellen Cuthbertson
2415 Route 65
P.O. Box 26
West Bloomfield, NY 14585

APPENDIX B-7

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

Office Of The Assistant Secretary
For Housing-Federal Housing Commissioner

Received April 13, 1995

Ms. Mary Buckelew
President, Jefferson County Commission
716 21st Street, North
Birmingham, AL 35263

Re: Jefferson County Zoning Ordinances Restricting the Siting of Manufactured Homes

Dear Ms. Buckelew:

This office is responsible for enforcing the Federal Manufactured Home Construction and Safety Standards on behalf of the Secretary for the U. S. Department of Housing and Urban Development ("HUD"). The Jefferson County Zoning Ordinances restricting the siting of manufactured homes in residential districts R-1 through R-4 were recently brought to our attention by the enclosed letter of Catherine R. Campbell.

In 1975, HUD issued the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Federal Act"). Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under (the Federal Act) is in effect, no State or political subdivision of a State shall have any authority . . . to establish . . ., with respect to any manufactured home

> covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations ("Federal Regulations"), 24 C.F.R. § 3282.11(e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

Section 603(6) of the Federal Act, 42 U.S.C. § 5402(6), defines a "manufactured home" as:

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

Section 1700.55 of Jefferson County's Zoning Ordinances defines "mobile home" as follows:

> A structure, transportable in one or more sections which is eight (8) feet or more in width and is thirty two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . . .

Section 1114 of Jefferson County's Zoning Ordinances, entitled "Regulations Governing Mobile Homes," restricts the siting of mobile homes by stating the following:

> Mobile homes are prohibited in all districts within the zoning jurisdiction of Jefferson County except zones R-5(A) and R-5(B). Mobile homes, limited to personal or family use only (not for rental pur-

> poses) shall be allowed in the following zones: R-6 (Residential) and A-1 (Agriculture) upon compliance with all the following requirements. [Requirements omitted].

With the exception of size, the language used in Jefferson County's definition of mobile home is essentially the same as the Federal Act's definition of manufactured home. A structure meeting the Federal Act's definition of manufactured home also meets the County's definition of mobile home. Accordingly, the restrictions applied to mobile/manufactured homes by Section 1114 above would not conflict with the preemptive provisions of Section 604(d) of the Federal Act because, as written, all structures meeting the definition of manufactured home appear to be treated the same.

Mrs. Campbell's letter, however, indicates that she and others were informed by Jefferson County officials that only "HUD Code" manufactured homes are not allowed in R-1 through R-4 zoning districts. She was further advised by County officials that if her home had a sticker showing it met the Southern Building Code, she would have no, problem siting it. Although Jefferson County's Zoning Ordinances do not distinguish manufactured/mobile homes built to the Federal Standards from those that are built to the Southern Building Code, it appears that in the enforcement of the zoning laws County officials do.

Generally, the enforcement of a local ordinance regulating the location of manufactured homes has not been subjected to the regulatory authority of the Federal Act because such enforcement rests on the locality's right to determine proper land use. However, if a locality is attempting to regulate and even exclude certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different than that prescribed by the National Manufactured Housing Construction and Safety Standards Act of 1974, the lo-

cality is without authority to do so under Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d).

Under Section 604(d) of the Federal Act and the Federal Regulations, a locality cannot accept manufactured homes meeting different standards (Southern Building Code) and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards (HUD Code). By excluding or restricting only manufactured homes built to the Federal Standards and accepting manufactured homes built to state or local codes, the locality is establishing standards for manufactured homes different than the Federal Standards. To the extent that the language or enforcement of local zoning regulations require that manufactured homes meet standards other than the Federal Standards for manufactured homes, they are preempted by Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d).

If, as indicated in Mrs. Campbell's letter, the only thing that determines the acceptability of a manufactured home in R-1 through R-4 zoning districts is whether the manufactured home meets the Southern Building Code, Jefferson County may be preempted by the Federal Act. In other words, if two structures are brought into the County and *both* structures are 320 or more square feet when erected on site, are built on a permanent chassis, and are transported in one or more sections but only the structure that meets the Southern Building Code can be sited by right in R-1 through R-4 residential districts, Jefferson County may be acting without authority.

The Department is willing to discuss this matter and to answer any questions you may have about the requirements of the National Manufactured Housing Construction and Safety Standards Act. We suggest that you contact Gary A. Nemec, of the Office of General Counsel at (202) 708-4044 for further information. Also, if you have any suggestions that will address what appears to be a conflict between the enforcement of Jefferson County's Zoning Or-

dinances and the Federal Act, you may want to discuss them with Mr. Nemec.

Sincerely,

David C. Nimmer, Director
Office of Manufactured Housing
and Regulatory Functions

Enclosure

APPENDIX B-8

April 26, 1995

Mr. Edward H. Dekarz, Jr.
Code Enforcement Officer
Town Of Marilla
Marilla, NY 14102

Re: Town of Marilla's Zoning Ordinances Restricting the Siting of Manufactured Homes

Dear Mr. Dekarz:

This office is responsible for enforcing the Federal Manufactured Home Construction and Safety Standards on behalf of the Secretary for the U.S. Department of Housing and Urban Development (HUD). The Marilla's Zoning Ordinances restricting the siting of manufactured homes only to duly approved mobile home parks was brought to our attention by the enclosed letter of Mr. Bruce Keller.

In 1975, HUD issued the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Federal Act"). Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Federal Act] is in effect, no State or political subdivision of a State shall have any authority . . . to establish . . ., with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations ("Federal Regulations"), 24

C.F.R. § 3282.11(e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

Section 603(6) of the Federal Act, 42 U.S.C. 5402 (6), defines a manufactured home as:

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

The definition of "mobile home" contained in Article 3, Section 1220.1 of Codes, Rules and Regulations of the State of New York ("New York Code") mirrors the definition of "manufactured home" in Section 603(6) of the Federal Act. Article 3, Section 1221.1 of the New York Code requires that mobile homes be constructed in accordance with the Federal Standards. Article 3, Section 1222.1 of the New York Code requires that "every mobile home shall have a manufacturer's label which certifies that, to the best of his knowledge and belief, the home is in compliance with all applicable Federal construction and safety standards."

Article 2, Section 1210.1(a) of the New York Code defines a "factory-manufactured home" as a structure that:

> incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site.

Article 2, Section 1212.1 of the New York Code requires that "every factory-manufactured home or com-

ponent shall bear an Insignia of Approval issued by the State Fire Prevention and Building Code Council."

Excluding the references to the label or insignia that establishes the construction code to which the structure complies, a "manufactured home" under the Federal Act could be considered a "factory-manufactured home," under New York Code. If a "factory manufactured home" can be built on a permanent chassis, the only thing that would distinguish the two structures is the construction code to which each was built and the insignia evidencing that construction code.

Generally, the enforcement of a local ordinance regulating the location of manufactured homes has not been subjected to the regulatory authority of the Federal Act because such enforcement rest on the locality's right to determine proper land use. However, if a locality is attempting to regulate and even exclude certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different than that prescribed by the National Section 604 Safety Standards Act of 1974, the locality is without authority to do so under Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d).

According to Mr. Keller, his home cannot be placed on a private lot because it is not a "factory-manufactured home." Article XII, Paragraph 12.4 of Marilla's Zoning Ordinances and your February 17, 1995 letter to Mr. Keller note that "mobile homes" are restricted to approved mobile home parks in the Town of Marilla. Your letter also indicates that the determination whether a structure is a "mobile home" restricted to a mobile home park or a "factory-manufactured home" allowed on private lots is based on whether the structure has the insignia of approval issued by the State Fire Prevention and Building Code Council.

Under § 604(d) of the Federal Act and the Federal Regulations, a locality cannot accept manufactured homes meeting different standards and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards (HUD Code). By excluding or restricting only manufactured homes built to the Federal Standards and accepting manufactured homes built to state or local codes, the locality is establishing standards for manufactured homes different than the Federal Standards. To the extent that the language or enforcement of local zoning regulations require that manufactured homes meet standards other than the Federal Standards for manufactured homes, they are preempted by Section 604(d) of the Federal Act, 42 US.C. § 5403(d).

In other words, if two structures are brought into Marilla and *both* structures are 320 or more square feet when erected on site, are built on a permanent chassis, and are transported in one or more sections but Marilla only allows the structure that has insignia of approval by the State Fire Prevention and Building Code Council to be sited outside an approved mobile home park, Marilla may be acting without authority.

The Department is willing to discuss this matter and to answer any questions you may have about the requirements of the National Manufactured Housing Construction and Safety Standards Act. We suggest that you contact Peter S. Race, of our Office of General Counsel at (202) 708-4184 for further information. Also, if you have any suggestions that will address the apparent conflict between your zoning regulations and the Federal Act, you may want to discuss them with Mr. Race.

Sincerely,

/s/ David C. Nimmer, Director
Office of Manufactured Housing
and Regulatory Functions

cc: Mr. Bruce Keller

APPENDIX B-9

June 19, 1995

Mr. Louis Holley
4851 Upper Holley Road
Holley, NY 14470

Dear Mr. Holley:

This is in response to your recent letter addressed to the Office of Manufactured Housing and Regulatory Functions, U.S. Department of Housing and Urban Development (HUD), concerning the Town of Claredon's zoning ordinances.

As discussed with Mrs. Patricia McDuffie of my staff, you have not received a written response from the Town of Claredon prohibiting the siting of your home. However, based upon several conversations between you and personnel in the Town of Claredon, you anticipate your zoning permit will be denied. Since you have received notice to vacate your residence by July 1, 1995, HUD has prepared a response that would-be applicable within the State of New York.

In 1975, HUD issued the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Federal Act"). Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Federal Act] is in effect, no State or political subdivision of a State shall have any authority . . . to establish . . ., with respect to any manufactured home covered, any standards regarding construction or safety applicable to the same aspect of performance of such manu-

> factured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations ("Federal Regulations"), 24 C.F.R. § 3282.11(e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

Section 603(6) of the Federal Act, 42 U.S.C. § 5402 (6), defines a manufactured home as:

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built an a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

The definition of "mobile home" contained in Article 3, Section 1220.1 of Codes, Rules and Regulations of the State of New York ("New York Code") mirrors the definition of "manufactured home" in Section 603(6) of the Federal Act. Article 3, Section 1221.1 of the New York Code requires that mobile homes be constructed in accordance with the Federal Standards. Article 3, Section 1222.1 of the New York Code requires that "every mobile home shall have a manufacturer's label which certifies that, to the best of his knowledge and belief, the home is in compliance with all applicable Federal construction and safety standards."

Article 2, Section 1210.1(a) of the New York Code defines a "factory-manufactured home" as a structure that:

> incorporates structures or components designed for residential occupancy, constructed by a method or system or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building sight. [sic]

Article 2, Section 1212.1 of the New York Code requires that "every factory-manufactured home or component shall bear an Insignia of Approval issued by the State Fire Prevention and Building Code Council."

Excluding the references to the label or insignia that establishes the construction code to which the structure complies, a "manufactured home" under the Federal Act could be considered a "factory-manufactured home," under New York Code. If a "factory manufactured home" can be built on a permanent chassis, the only thing that would distinguish the two structures is the construction code to which each was built and the insignia evidencing that construction code.

Generally, the enforcement of a local ordinance regulating the location of manufactured homes has not been subjected to the regulatory authority of the Federal Act because such enforcement rest on the locality's right to determine proper land use. However, if a locality is attempting to regulate and even exclude certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different than that prescribed by the National Manufactured Housing Construction and Safety Standards Act of 1974, the locality is without authority to do so under Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d).

Under § 604(d) of the Federal Act and the Federal Regulations, a locality cannot accept manufactured homes meeting different standards and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards (HUD Code). By excluding or restricting only manufactured homes built to the Federal standards and accepting manufactured homes built to state or local codes, the locality is establishing standards for manufactured homes different than the Federal Standards. To the extent that the language or enforcement of local zoning regulations require that manufactured homes meet

standards other than the Federal Standards for manufactured homes, they are preempted by Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d).

In other words, if two structures are brought into Claredon and *both* structures are 320 or more square feet when erected on site, are built on a permanent chassis, and are transported in one or more sections but Claredon only allows the structure that has insignia of approval issued by the State Fire Prevention and Building Code Council to be sited outside an approved mobile home park, Claredon may be acting without authority.

The Department is willing to discuss this matter and to answer any questions you may have about the requirements of the National Manufactured Housing Construction and Safety Standards Act. We suggest that you contact Peter S. Race, of our Office of General Counsel at (202) 708-4184 for further information. Also, if you have any suggestions that will address the apparent conflict between your zoning regulations and the Federal Act, you may want to discuss them with Mr. Race.

Sincerely,

/s/ David C. Nimmer
Director, Office of Manufactured
Housing and Regulatory
Functions

APPENDIX B-10

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

Office of the Assistant Secretary for Housing
Federal Housing Commission

February 12, 1996

Mr. Charles Owen, Chair
Osceola County Board of County
Commissioners
17 South Vernon Ave.
Kissimmee, Florida 34741-5488

Re: Osceola County Zoning Regulations Restricting the Siting of Manufactured Homes

Dear Mr. Owen:

On June 11, 1993, I sent a letter to your predecessor, Larry Whaley, advising him of our concerns with the Osceola County Zoning Regulations ("Osceola's Regulations") for Residential Single Family RS-1 through RS-1C Districts. A copy of that letter is enclosed for your information and convenience.

At that time, this office, which is responsible for enforcing the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Act"), was concerned about Osceola's prohibitions on the siting of manufactured homes built to the Federal Standards in RS-1 through RS-1C Residential Single Family Districts. The same regulations appeared to place no restrictions on structures, which met the Act's definition of manufactured home, but were built to the Standard Building Code.

Our understanding is that Osceola County has continued to exclude or restrict manufactured homes built to the Federal Standards and permit manufactured homes built to the Standard Building Code. Such continued practice is unauthorized by the Act. While a locality has a right to determine proper land use and establish aesthetic standards for manufactured homes, Section 604(d) of the Act provides that "no State or political subdivision of a State shall have any authority . . . to establish . . ., with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard." 42 U.S.C. § 5403(d).

A locality cannot accept manufactured homes meeting different standards and exclude or restrict manufactured homes that are aesthetically the same but meet the Federal Standards. By excluding or restricting only manufactured homes built to the Federal Standards, the locality is establishing standards for manufactured homes different than the Federal Standards.

This letter is to advise you that Osceola's Regulations, to the extent that they continue to require standards other than the Federal Standards for manufactured homes, are preempted and unauthorized by the Act and may subject Osceola to legal action by individuals affected by such unauthorized activity.

The Department is willing to discuss this matter and to answer any questions you may have about the requirements of the Manufactured Housing Construction and Safety Standards Act. We suggest that you contact Gary A. Nemec, of our Office of General Counsel at (202) 708-4044 for further information. Also, if you have any suggestions that will address the apparent conflict between Osceola's Regulations and the Federal Act, you may want to discuss them with Mr. Nemec.

Sincerely,

David C. Nimmer, Director
Office of Manufactured Housing
and Regulatory Functions

Enclosure

cc: Mr. Phillip R. Bergelt
Spiral Enterprise of America, Inc.
P.O. Box 700265
St. Cloud, Florida 34770-0265

APPENDIX B-11

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

Office Of The Assistant Secretary For Housing
Federal Housing Commission

February 28, 1996

Honorable E. Campbell, Mayor
City of Spencer
8300 N.E. 36th Street
Spencer, Oklahoma 73084

Re: City of Spencer Zoning ordinances Restricting the Siting of Manufactured Homes

Dear Mayor Campbell:

This office is responsible for enforcing the Federal Manufactured Home Construction and Safety Standards on behalf of the Secretary of Housing and Urban Development. The Zoning Ordinances for the City of Spencer were brought to our attention by the enclosed letter from the Manufactured Housing Association of Oklahoma ("MHAOK").

In 1975, HUD issued the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Federal Act"). Section 603(6) of the Federal Act, 42 U.S.C. § 5402(6), defines a "Manufactured Home" as:

> [A] structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent

> chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

Section 12-204(54) of Spencer's Zoning Ordinances defines "Mobile Home" as follows:

> [A] portable or mobile living unit used or designed for human occupancy on a permanent basis . . . .

Accordingly, structures meeting the Federal Act's definition of "manufactured home" would clearly fall under the broad definition of "mobile home" in Spencer's Zoning Ordinances.

Generally, the enforceemnt of a local ordinance regulating the location of manufactured homes has not been subjected to the regulatory authority of the Federal Act because such enforcement rests on the locality's right to determine proper land use. In addition, a locality is free to adopt and enforce ordinances that regulate the appearance and dimensions of manufactured homes so long as the criteria for such ordinances do not have the effect of excluding manufactured homes based on the construction and safety standards to which they were built. Such regulation of aesthetics Protects property values, preserves the character and integrity of communities and neighborhoods and assures architectural compatibility.

However, if a locality is attempting to regulate and even exclude certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different than that prescribed by the Federal Act, the locality is without authority to do so under Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d).

Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Federal Act] is in effect, no State or political subdivision of a State shall have any authority . . . to establish . . .,

> with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

In addition, the Manufactured Home Procedural and Enforcement Regulations ("Federal Regulations"), 24 C.F.R. § 3282-11(e), prohibit any State or locality from establishing and enforcing rules or taking any action that impairs the Federal superintendence of the manufactured home industry.

According to the information provided by the MHAOK, specifically the enclosed form letter used by Spencer for rezoning from an RI Residential to an R5 Mobile Home District, a "mobile home must meet all 1993 building, plumbing, mechanical and electrical codes." While it is unclear what is meant by the "1993 building, plumbing, mechanical and electrical codes," the form letter might be referring to the Building Officials and Code Administrators International ("BOCA") Basic Building Code provided for in Section 5-301 of Spencer's Building Code and Regulations.

If the reference to the 1993 codes means the BOCA Building Code, it appears that, under Spencer's Zoning Ordinances, a structure meeting the Federal Act's definition of manufactured home, because it falls within Spencer's definition of "mobile home," must comply with the BOCA Building Code to be sited within the City's limits. The same structure, if built to the Federal Standards, could not be sited.

Under Section 604(d) of the Federal Act and the Federal Regulations, a locality cannot accept manufactured homes meeting different standards, such as the BOCA Building Code, and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal Standards. By excluding or restricting only

manufactured homes built to the Federal Standards and accepting manufactured homes built to other codes, the locality is establishing standards for manufactured homes different than the Federal Standards. To the extent that the language or enforcement of local zoning regulations require that manufactured homes meet standards other than the Federal Standards, they are preempted by Section 604(d) of the Federal Act, 42 U.S.C. § 5403(d).

If, as it appears from the information provided to us, the only thing that determines the acceptability of a manufactured home within the city limits of Spencer is whether the manufactured home meets the BOCA Building Code, Spencer may be preempted by the Federal Act. In other words, if two structures are brought into the City of Spencer and *both* structures are 320 or more square feet when erected on site, are built on permanent chassis, and are transported in one or more sections, but only the structure that meets the BOCA Building Code can be sited within the City's limits while the one built to the Federal Standards cannot, Spencer may be acting without authority.

However, the City of Spencer is not in conflict with the preemptive provisions of the Federal Act if, without regard to construction standards, it treats all structures that meet the Federal Act's definition of "Manufactured Home" at 42 U.S.C. § 5402(6) the same.

The Department is willing to discuss this matter and to answer any questions you may have about the requirements of the Federal Act. We suggest that you contact Gary A. Nemec, of our Office of General Counsel at (202) 708-4044 for further information. Also, if you have any suggestions that will address the apparent conflict between Spencer's Zoning Ordinances and the Federal Act, you may want to discuss them with Mr. Nemec.

Sincerely,

David R. Williamson, Director
Office of Consumer and
Regulatory Affairs

Enclosure

cc: Ms. Deanna Fields, Executive Director
Manufactured Housing Association of Oklahoma
P.O. Box 32309
Oklahoma City, OK 73123

APPENDIX B-12

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

Office Of The Assistant Secretary For
Congressional And Intergovernmental Relations

March 20, 1996

Honorable Tillie K. Fowler
Member, United States House
of Representatives
Suite 204
140 S. Atlantic Avenue
Ormond Beach, FL 32176

Dear Mrs. Fowler:

Thank you for your letter of February 8, 1996, concerning your constituent, Sharon Trescott, and the difficulty she is experiencing in siting her manufactured home in the County of Volusia, Florida. As you requested, we have reviewed the County's Zoning Ordinances in further detail to determine the propriety of Volusia's actions in this matter. Our review of the ordinances indicated that the County may be acting without authority by attempting to enforce the 1994 Standard Building Code on structures that meet the definition of "manufactured home" under Section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5402(6), ("Act").

Under the Act, the Secretary of Housing and Urban Development has been granted the preemptive authority to establish and enforce standards for manufactured homes. Through the Act, Congress has declared that, as long as the Secretary has established a standard for manufactured homes, no State or political subdivision of a State has

authority to establish, with respect to any manufactured home covered by the Secretary's standard, any standard regarding construction or safety applicable to the same aspect of performance that is not identical to the standard established by the Secretary. 42 U.S.C. § 5403(d).

Section 603(6) of the Act, 42 U.S.C. § 5402(6), defines a "manufactured home" as:

> A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation. . . .

If the Secretary has established a standard for such a structure, no state or political subdivision of a state can establish a different standard for that structure.

"Appendix B—Zoning Ordinance" of Section 201.00 of the Volusia County Code defines "Manufactured Dwelling" as:

> A dwelling fabricated in a manufacturing facility and bearing a seal certifying it is constructed to standards as adopted under the authority of part IV, chapter 553, Florida Statutes, and rules adopted by the Florida Department of Community Affairs under chapter 9F-1 et seq., Florida Administrative Code.

"Appendix B—Zoning Ordinance" of Section 201.00 of the Volusia County Code defines "Mobile Home Dwelling" as:

> A single-family dwelling fabricated in a manufactured facility, having a width of more than 8 feet and length of more than 40 feet, and bearing a seal certifying it is constructed either to the Federal

> Manufactured Housing Construction and Safety Standards Code or to obsolete ANSI 119.1 Mobile Home Design and Construction Standards.

Except for the standard to which it might be built, a structure, meeting the Act's definition of "manufactured home" could fall within the definition of a "Manufactured Dwelling" and within the definition of a "Mobile Home Dwelling." Nothing in Volusia's Zoning Ordinances appears to preclude a "Manufactured Dwelling" from being built on and transported by a permanent chassis and it is assumed that, if it is to comply with the Manufactured Home Construction and Safety Standards ("Federal Standards"), a "Mobile Home Dwelling" is built on a permanent chassis. Assuming that a "Manufactured Dwelling" can be built on a permanent chassis, the only thing that really distinguishes such a "Manufactured Dwelling" from a "Mobile Home Dwelling" in Volusia County is the construction standard to which it was built.

While a "Manufactured Dwelling," built on a permanent chassis, and a "Mobile Home Dwelling" may both be considered manufactured homes under the Act, it appears that Volusia County treats them differently. The January 23, 1996, letter to you from Volusia County's Attorney, Douglas M. Weaver, acknowledges that Volusia County's Zoning Ordinances do not permit a home built to the Federal Standards, like Ms. Trescott's, on property classified as RR—Rural Residential. Mr. Weaver indicates, however, that "a home meeting the standards of the 1994 Standard Building Code may be located in this [zoning] classification." Thus, the County allows Manufactured Dwellings on property zoned RR—Rural Residential because they are built to the Standard Building Code. The County prohibits Mobile Home Dwellings on the very same property because they are built to the Federal Standards. Because of this prohibition, Mr. Weaver's statement that "the County of Volusia has not created any additional construction or safety standards

in reference to HUD approved manufactured homes," is simply wrong. By restricting such homes from certain areas, the County is, in fact, imposing the Standard Building Code on *all* manufactured homes.

Congress, when it vested preemptive standard establishing authority in the Secretary under the Act, did not distinguish manufactured homes by what is "HUD approved" and what is not "HUD approved." Congress simply said that the Secretary has preemptive authority to establish standards for all structures meeting the Act's definition of "manufactured home." Volusia County appears to permit manufactured homes built to the Standard Building Code to be sited, but denies the siting of manufactured homes built to the Federal Standards. In doing so, the County is enforcing the Standard Building Code on manufactured homes. Since, the Standard Building Code is not identical to the standards established by the Secretary, the County is acting without authority.

In more general terms, if two structures are proposed to be sited in a locality and both are 320 or more square feet when erected on site, both are built on a permanent chassis, and both are transported in one or more sections, but one structure meets the local code (i.e., the Standard Building Code) and the other meets the Federal Standards, the locality must treat the structures in the same manner. If it allows the one complying with the local code to be sited, it must allow the other. If it restricts or precludes the siting of the one that meets the Federal Standards, it must do the same with the other. Not to do so would be penalizing the home built to the Federal Standards because it is not built to the local standards. Such an action is the enforcement [sic] the local satndards on manufactured homes—standards different than the Federal standards.

This general position relating to a locality's lack of authority to enforce zoning laws that impose construction

and safety standards on manufactured homes is supported by the 11th Circuit Court of Appeals in *Scurlock v. City of Lynn Haven, Florida,* 858 F.2d 1521 (11th Cir. 1988). That case involved a city that was attempting, through zoning laws, to exclude a manufactured home based solely on city's safety code. The home was constructed to the Federal Standards but the zoning ordinance required structures built to the Southern Building Code. The city's building inspector agreed that, if the home had met the Southern Building Code requirement, a permit would have been issued. The Court in *Scurlock* continued that a locality "cannot attempt land use and planning through the guise of a safety provision in an ordinance when that safety requirement is preempted by federal law." 858 F.2d at 1525.

To the extent that the language or enforcement of the County of Volusia's Zoning Ordinances requires that manufactured homes meet standards other than the Federal Standards, they are preempted by Section 604(d) of the Act, 42 U.S.C. § 5403(d). However, the County is not in conflict with the preemptive provisions of the Act if, without regard to construction standards, it treats all structures that meet the Act's definition of "Manufactured Home" at 42 U.S.C. § 5402(6) the same.

The Department is willing to discuss this matter and to answer any questions you, Ms. Trescott or Volusia County may have about the requirements of the Act. Please contact Mr. Gary A. Nemec in our Office of General Counsel at (202) 708-4044 for further information.

Sincerely,

Hal C. Decell III
Assistant Secretary

APPENDIX C

Companies that manufacture on-frame (permanent chassis) modular homes built to local codes:

Burlington Homes
P.O. Box 620 Main St.
Oxford, Maine 04270
Tel: 207-539-4406
Fax: 207-539-2900

Cavalier Homes *
P.O. Box 5003
Wichita Falls, Texas 76307
Tel: 940-723-5523
Fax: 940-766-4616

Cavco Industries
2502 W. Durango Rd.
Durango, Arizona 85009
Tel: 800-422-8264
Fax: 602-484-7028

Champion Enterprises *
Auburn Hills, Michigan
Tel: 248-340-9090

Chariot Eagle
931 N.W. 37th Ave.
Ocala, Florida 34475
Tel: 352-629-7007
Fax: 352-629-6920

Crestline Homes
5880 Crestline Rd.
Laurinburg, NC 28352
Tel: 910-276-0195
Fax: 910-276-7989

Homes of Merit *
Bldg. 121
Bartow Air Base
Bartow, Florida 33830
Tel: 941-533-0593
Fax: 941-533-0310

Horton Homes *
Eatonton, Georgia
Tel: 706-485-8506

Mascot Homes
P.O. Box 127
Grambling, South Carolina 29348
Tel: 864-472-2041
Fax: 864-472-8958

Muncy Building Enterprises
P.O. Box 325
Muncy, Pennsylvania 17756
Tel: 717-546-5444
Fax: 717-546-5903

New Era Homes
P.O. Box 269
451 Southern Ave.
Strattanville, PA 16258
Tel: 800-678-5581
Fax: 814-764-5658

R-Anell Homes
P.O. Box 428
Denver, North Carolina 28037
Tel: 704-483-5511
Fax: 704-483-5674

Ritz-Craft Corporation
P.O. Box 70
Mifflinburg, PA 17844
Tel: 717-966-1053
Fax: 717-966-3022

Schult Homes *
221 US 20 West
Middlebury, Indiana 46540
Tel: 219-825-5881
Fax: 219-825-5880

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* Denotes a member of the Louisiana Manufactured Housing Association.

Champion Enterprises
2701 University Dr., Ste. 300
Auburn Hills, Michigan 48326
Tel: 248-340-9090
Fax: 248-340-0888

Horton Homes
P.O. Drawer 4410
Eatonton, Georgia 31024
Tel: 706-485-8506
Fax: 706-485-4446

APPENDIX D

Newspaper Reviews on HUD-code Homes

Renee Elder, *Factory-Built Homes Move Up; Affordability, Luxury Features Bolster Appeal,* Tennessean, July 2, 1997, at 1E

Leon Teeboom, *Moving Up To Mobile; Real Estate: Many in O.C., for economic or lifestyle reasons, are finding manufactured housing the way to go,* Orange County Register, June 19, 1997, at C01

Shirley Armbruster, *Factory Built; An upscale manufactured home takes root in the foothills,* Fresno Bee, May 31, 1997, at E1

Robert Nusgart, *Remodeled community: New Colony Village in Elkridge features the first single-family house of its kind, a breakthrough design in manufactured homes,* Sun (Baltimore), May 25, 1997, at 1N

Linda Murphy, *Titan builds new image for homes,* Observer-Dispatch Utica, NY, May 18, 1997, at D14

Judy Wade, *Retiring To A Manufactured Home Is An Affordable Option,* News & Record (Greensboro, NC), Apr. 23, 1997.

Jeff Crider, *Home-made on the factory floor; Manufactured housing has come a long way from the trailer park. Today's models are just as spacious and fancy as site-built homes,* Press-Enterprise (Riverside, CA), Apr. 13, 1997, at G01.

Kathryn Holzka, *A New Twist on Housing,* Santa Fe New Mexican, Mar. 23, 1997, at I1

Nick Harder, *Manufactured Dreams; These homes blend in well and have all the amenities of regular houses such as drywall and fine appliances,* Orange County Register, Mar. 22, 1997, at E01

Kevin Sack, *The Nation; Mobile Homes Go Upscale: One Pet Per Plot, Please,* N.Y. Times, Feb. 23, 1997, at 3

Mike Pellegrini, *Insert Tab A Into Slot B; Factory-Built Homes Moving Into The Mainstream,* Pittsburgh Post-Gazette, Feb. 1, 1997, at D-1

Brenda Seekins, *Manufactured Dreams Tailored to buyers' needs, factory-made homes aren't just trailers anymore,* Bangor Daily News (Bangor, ME), Jan. 25, 1997

Dave Munday, *Manufactured housing industry working to change image,* Post and Courier (Charleston, SC), Jan. 20, 1997, at D10

Pamela Sherrid, *In on the ground floor,* U.S. News and World Report, Dec. 9, 1996, at 108

Ursula Miller, *Zaring's new blueprint; Known for its tony houses, the Cincinnati-based builder surprises watchers moving into manufactured homes,* Cincinnati Enquirer, Dec. 8, 1996, at I01

Cara S. Trager, *Mobile Homes Provide Path To Affordable Homeownership,* Newsday, Nov. 22, 1996, at D02

Jason Sandford, *A Search For Acceptance Manufactured Housing Makers Working To Overcome Stigmas,* Asheville Citizen-Times (Asheville, NC), Aug. 12, 1996, at A1

Scott Grusky, *Don't Fence Me In; Manufactured Homes Are No Longer Confined To Traditional Parks. Today They're Being Used On Lots In Both Urban And Rural Settings.*, L.A. Times, Aug. 11, 1996, at K1

And now for the homeburger, Economist, Aug. 10, 1996, at 19

Jim Szymanski, *Homes Fresh From The Factory; High Costs Of Traditional Houses Makes Many People See Manufactured Homes As Attractive Alternative,* News Tribune, July 7, 1996, at F1

Carlos Tejada, *Mobile homes today are more than metal walls and roofs*, Austin American-Statesman, July 5, 1996, at D1

G.K. Sharman, *An Upwardly Mobile Lifestyle; Residents Of Mobile Home Parks Can Find Affordable Housing In A Refreshingly Friendly Atmosphere*, Orlando Sentinel, Apr. 14, 1996, at 19

Elizabeth Wilkerson, *Zoning Strictures Being Challenged; Manufactured Home Industry Not Taking Impediments Lightly*, Richmond Times Dispatch, Feb. 25, 1996, at K-1

Rachel Smolkin, *Not-So-Mobile Homes*, Albuquerque Tribune, Jan. 23, 1996, at C1

Anne Carothers-Kay, *Trailer parks polish image; Mobile homes go upscale as industry reinvents itself*, Des Moines Register, Jan. 3, 1996, at 3

Glen Justice, *Manufactured Housing Finds A Home; An Old Idea With A New Look Can Cut Building Cost In Half*, Times-Picayune, Dec. 9, 1995, at R1

Ralph Bivins, *Mobile home sales are booming across Texas. More amenities and increased affordability are luring people who've never been able to buy their own homes before.*, Houston Chronicle, Nov. 19, 1995, at B1

Mark Klimek, *Mobile Homes: An Affordable Alternative; Manufactured Housing Is Better Built, Better Looking And More Comfortable Than It Was A Few Decades Ago.*, Portland Press Herald, Nov. 10, 1995, at 2F

APPENDIX E

List of Materials Lodged with the Clerk of Court

Susan Brady, *Manufactured Housing: HUD Code Homes Lead The Way in City's Redevelopment,* Professional Builder, Sept. 1993.

Building a Foundation in Manufactured Housing, America's Community Banker, Sept. 1995

Don O. Carlson, *New Colony Village, 'Most Beautiful' HUD-Code Home Project, May Also Be The Biggest Industry Breakthrough,* Automated Builder, June 1997

Manufactured Housing Institute, Community Profile, Winter 1994

Manufactured Housing Institute, Community Profile, Fall 1994

Manufactured Housing Institute, Community Profile, Winter 1995

Manufactured Housing Institute, Housing Currents, Winter 1997

APPENDIX F

Tables reprinted from the Foremost Insurance Company, *The Market Facts* (1995)

FAMILY HOUSEHOLD DESIGNATION	1981	1984	1987	1990	1993
Husband And Wife	65%	66%	62%	58%	58%
Male And Child/Other Relative	0%	1%	1%	2%	1%
Female And Child/Other Relative	6%	9%	10%	10%	10%
Male Living Alone	7%	5%	6%	9%	8%
Female Living Alone	19%	18%	18%	19%	21%
Male And Non-Relative	1%	0%	1%	1%	1%
Female And Non-Relative	2%	1%	2%	2%	1%
Total Percentage	100%	100%	100%	100%	100%
Number Responding	6,968	7,276	16,568	15,401	14,224

AGE OF HOUSEHOLD HEAD	1981	1984	1987	1990	1993
Less Than 30 Years	24%	21%	20%	10%	8%
30-39 Years	25%	23%	25%	25%	25%
40-49 Years	10%	12%	14%	18%	18%
50-59 Years	13%	12%	11%	13%	14%
60-69 Years	15%	17%	15%	17%	16%
70 Years And Over	13%	16%	15%	17%	19%
Total Percentage	100%	101%	100%	100%	100%
Number Responding	6,968	7,276	16,568	15,401	14,224
Average Age	46	47	47	50	51

WHO LIVES IN MANUFACTURED HOMES?

Employment Status of Household Head	1981	1984	1987	1990	1993
Full Time	64%	59%	59%	60%	58%
Part Time	6%	6%	7%	7%	7%
Retired	23%	26%	26%	27%	28%
Not Employed	8%	9%	8%	6%	7%
Total Percentage	101%	100%	100%	100%	100%
Number Responding	6,965	7,276	16,391	15,053	13,549

Occupation of Household Head	1981	1984	1987	1990	1993
Retired	23%	26%	26%	26%	26%
Operator/Laborer	20%	20%	18%	15%	14%
Technical/Sales/ Administrative Support	15%	12%	12%	10%	8%
Craftsman/Repairman	12%	12%	11%	13%	12%
Managerial/Professional	9%	10%	8%	12%	14%
Service	8%	8%	7%	8%	7%
Student/Armed Forces/Other	8%	9%	15%	13%	16%
Farming/Forestry/Fishing	4%	4%	3%	2%	2%
Total Percentage	99%	101%	100%	99%	99%
Number Responding	6,968	7,276	16,432	15,401	14,224

Education of Household Head	1981	1984	1987	1990	1993
Grade School	9%	8%	9%	8%	5%
Some High School	14%	16%	16%	15%	14%
High School Graduate	44%	43%	44%	42%	38%
Some College	20%	22%	22%	25%	27%
College Graduate— 2 Year Associate Degree	*	*	*	*	5%
College Graduate—4 Year Degree	7%	6%	5%	6%	7%
Post Graduate Degree	5%	5%	4%	4%	3%
Total Percentage	99%	100%	100%	100%	99%
Number Responding	6,959	7,265	16,535	15,337	14,114

* Throughout this report, an "*" will indicate that comparable data is not available from previous studies.

Marital Status	1981	1984	1987	1990	1993
Now Married	65%	66%	62%	58%	58%
Never Married	13%	9%	9%	10%	9%
Divorced/Widowed/Separated	22%	25%	29%	32%	32%
Total Percentage	100%	100%	100%	100%	99%
Number Responding	6,968	7,276	16,567	15,401	14,224

Annual Household Income	1981	1984	1987	1990	1993
Less Than $10,000	29%	27%	23%	18%	15%
$10,000-$19,999	41%	37%	35%	32%	27%
$20,000-$29,999	23%	22%	24%	26%	26%
$30,000-$39,999	5%	9%	12%	14%	17%
$40,000 And Over	2%	5%	7%	10%	15%
Total Percentage	100%	100%	101%	100%	100%
Number Responding	6,968	7,276	16,568	15,401	14,224
Median Income Level (in dollars)	$14,500	16,000	17,500	20,100	22,300

Household Size	1981	1984	1987	1990	1993
1 Member	25%	23%	24%	27%	28%
2 Members	35%	37%	34%	36%	36%
3 Members	16%	18%	18%	16%	15%
4 Members	15%	15%	15%	14%	13%
5 Or More Members	8%	7%	8%	7%	7%
Total Percentage	99%	100%	99%	100%	99%
Number Responding	6,968	7,276	16,568	15,401	14,224
Average Household Size	2.5	2.5	2.5	2.4	2.4

APPENDIX G-1

City of La Porte
Established 1892

October 6, 1993

Mrs. Jan Stevenson
230 Dwire Drive
La Porte, TX 77571

Re: Replacement of Burned Home: 230 Dwire

Dear Mrs. Stevenson,

Debbie Wilmore has informed me that you wish to replace the manufactured home that was removed from 230 Dwire. First, I would like to let you know that Mrs. Wilmore has not ignored or delayed acting on your request for information. As you know, the manufactured home at this location was a legally established nonconforming structure. Mrs. Wilmore is not completely familiar with all the Zoning Ordinance requirements that pertain to nonconforming structures. She, therefore, referred your request to me. I, in turn, contacted the City Attorney's office. I apologize for the delay and any inconvenience this may have caused.

As we discussed during the August 19, 1993, Planning and Zoning Commission meeting a pre-1976 mobile home may one time only be replaced on a lot by a manufactured home, constructed subsequent to June 15, 1976. As a prerequisite to issuing a permit to replace the home which was located at 230 Dwire, the City must ask that you submit a copy of the title of this home. Once it has been verified, by title, that the burned home was constructed prior to June 15, 1976, the City will be able to process a permit application for placement of a manufactured home.

A permit application for placement of the home must include a copy of the manufactured home title verifying construction subsequent to June 15, 1976 and a survey/ site plan indicating location of buildings and other property improvements. A copy of the City's "Residential Construction Handout" is attached. This handout contains specifications for setbacks, lot coverage, fencing, etc.

The City will do all it can to assist you in resolving this matter in a timely fashion, but before we can go forward, a copy of the title for the burned home must be submitted. Also, it must be stressed that the City can only issue a permit if the burned home was constructed prior to June 15, 1976. If the burned home was constructed subsequent to June 15, 1976, it is a manufactured home and is not eligible for replacement under the provisions of the State's Manufactured Housing Act. A manufactured home, destroyed by fire or other causes would be subject to the requirements of Zoning Ordinance Section 4-201.

While this section makes provisions for repair of damaged structures, it very clearly prohibits the total reconstruction of a destroyed nonconforming structure. If the home formerly located on this property was a manufactured home, due to the fact it has been completely demolished, it cannot be replaced; nor can the Zoning Board of Adjustment grant a variance or special exception to permit another manufactured home to be placed on the property.

Although, under these circumstances, another manufactured home may not be placed on this property, there are two alternative options which are still available. The first option is to have a home built on the property. The Bay Oaks Subdivision is in a R-1, Low Density Residential Zone. Neither zoning nor subdivision deed restrictions should present any obstacles to construction of a conventionally built single family home.

The second option would be to have a "modular home" placed on the lot. A modular home is a type of manufactured home that has been certified by the Texas Department of Labor and Standards as meeting model building code standards. Modular homes, by state law are allowed in R-1, residential zones.

As both modular and conventionally built homes are permitted in R-1 zones, there is not a time limit or deadline for making a permit application for either of these options.

Should you wish any additional information regarding either of these options, please feel free to contact my office. I can be reached at 471-5020 ext. 254.

Sincerely,

Mark S. Lewis
Chief Building Official

xc: Charles Harrington, Director of Planning
John Armstrong, Assistant City Attorney

APPENDIX G-2

City of La Porte
Established 1892

October 14, 1993

Mrs. Jan Stevenson
PO Box 385
La Porte, TX 77571

Re: 230 Dwire

Dear Mrs. Stevenson,

I received your October 12, 1993, letter. In the letter you raised two questions. In regard to the first question, you are correct. If the home which burned was manufactured on or subsequent to June 15, 1976, it cannot be replaced with a manufactured home. This determination is based on state law.

The Texas "Manufactured Housing Standards Act" defines a "mobile home" as a structure "constructed before June 15, 1976 . . ." The Act defines a "Hud-code manufactured home" as a structure "constructed on or after June 15, 1976 . . ." Article 5221f (from Vernon's Civil Statutes) states, "permits . . . must be granted by an incorporated city for the replacement of a mobile home within its corporate limits with a HUD-code manufactured home."

If the destroyed home was manufactured prior to June 15, 1976, it was, as defined by the State of Texas, a mobile home. As such, under state law, it may be replaced by a HUD-code manufactured home.

If the destroyed home was manufactured on or subsequent to June 15, 1976, it was, again, as defined by the State of Texas, a HUD-code manufactured home. As a manufactured home it would not be covered by the "re-

placement provision" of state law. It would, rather, be subject to regulation under the provisions of La Porte's Zoning Ordinance. Under these circumstances, zoning regulations (Section 4-201.3, Ordinance 1501) would not allow replacement of the destroyed home.

Please note, if the burned home was a mobile home, a permit for replacement must be submitted no later than December 27, 1993. This date is 90 days from September 18, 1993, the date on which demolition of the burned home was completed. After 90 days have elapsed, under the terms of Zoning Ordinance Section 4-202.4, use of property as a mobile/manufactured home site will be considered abandoned. Once abandoned, this use of the property cannot be resumed.

The second question dealt with replacement of the burned home with a "modular" home. I am not familiar with "Park Avenue" as a particular model or brand of home. If it is, however, certified as a modular home by the Texas Department of Labor and Standards, it will comply with the City's zoning and building code requirements. Modular homes are identified as such by title and by means of identification decals. Each section of a modular home must have an identification decal attached. The decals are mounted on the rear of the unit, usually near the tail light assembly. Modular home decals are blue. On the decal itself will be what can be described as a stylized rendition of the Texas State Star. The decal will read "Texas Department of Labor and Standards". It will also include a rather long serial number. The serial number noted on the title will match the one noted on the identification decal.

Once you have verified the home as a modular unit, please provide the City with a copy of the title. A fax copy from the manufacturer or dealership will be acceptable. The City will verify the title with the Department of Labor and Standards. Following verification, you may

submit a building permit application. The application should include a survey/site plan of the property. The home must be located on the property in a manner that complies with City setback and lot coverage requirements. These standards are noted in the "Residential Construction Handbook" that was included in the City's October 6, letter.

A building permit fee will be calculated and assessed based on valuation of the home. Valuation is calculated at $31.50 per square foot of the floor area. This is the same method of valuation used for conventionally built wood frame homes. Plumbing and electrical hookups for the home must be permitted separately. Finally, as the Zoning Ordinances lists modular homes as "Permitted" in R-1 zones, there is no time limit or date by which a modular home would have to be set on the property.

Should you have any questions regarding either of the matters discussed in this letter, please feel free to call. I can be reached at 471-5020 ext. 254.

Sincerely,

Mark S. Lewis

ML:pal

xc: Charles Harrington, Director of Planning
John Armstrong, Assistant City Attorney